

**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY**

**Twelfth Amended Declaration of  
Emergency and Administrative Order**

**Hurricane Katrina and its Aftermath  
Agency Interest No. 130534**

**September 30, 2007**

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**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF  
HURRICANE KATRINA  
AND ITS AFTERMATH**

**AGENCY INTEREST NO. 130534**

**TWELFTH AMENDED DECLARATION OF EMERGENCY  
AND ADMINISTRATIVE ORDER**

Pursuant to the authority granted to me by Louisiana Revised Statutes 30:2001 *et seq.*, and particularly La. R.S. 30:2033 and 2011(D)(6), I hereby make the following findings, declaration and order, which supersede all previous Declarations of Emergency and Administrative Orders issued by this agency in connection with the above captioned and entitled matter.

The progress of recovery efforts in the emergency area has reduced the need for disposal facilities for construction and demolition debris. Therefore, after consultation with the U.S. Army Corps of Engineers and local government authorities, provisions in previous orders that gave special authorizations for construction and demolition (C & D) debris landfills have been revised to apply only to certain facilities, the selection of which was based upon consideration of available permitted landfill capacity, quantities and types of debris remaining, the distance between landfills and remaining debris, and other factors. Furthermore, progress of recovery efforts in Plaquemines and St. Tammany Parishes is such that Section 2 (Solid Waste Management) of the Administrative Order below is no longer necessary in those parishes.

**FINDINGS AND DECLARATION**

1. On the 29th day of August, 2005, Hurricane Katrina (hereinafter "Hurricane") struck Louisiana, causing widespread damage within the parishes of Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles,

St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge, and West Feliciana, which parishes initially constituted the specific areas covered by previous Emergency Declarations and Orders. Based on the status of their recovery efforts, only Jefferson, Orleans, Plaquemines, St. Bernard and St. Tammany Parishes will remain covered by the Emergency Order. These parishes shall herein be referred to as the "Emergency Areas".

2. By State of Louisiana Proclamation No. 48 KBB 2005, the Governor declared on August 26, 2005, that a state of emergency exists in the state of Louisiana, as Hurricane Katrina posed an imminent threat, carrying severe storms, high winds and torrential rain that caused flooding and damage to private property and public facilities and threatened the safety and security of the citizens of the state of Louisiana. By State of Louisiana Proclamation No. 54 KBB 2005, the Governor extended the state of emergency due to the extreme damage caused by Hurricane Katrina and the continuing disaster and emergency conditions in the affected areas.

3. On August 29, 2005, FEMA issued a Disaster Declaration, FEMA-1603-DR covering south Louisiana.

4. I find that the Hurricane has created conditions that require immediate action to prevent irreparable damage to the environment and serious threats to life or safety in the Emergency Areas.

WHEREFORE, I hereby declare that an emergency exists, and that the following measures are necessary to prevent irreparable damage to the environment and serious threats to life or safety in the Emergency Areas.

#### **ORDER**

All provisions of the following Order apply to Jefferson, Orleans and St. Bernard Parishes. Section 2 (Solid Waste Management) does not apply to Plaquemines and St. Tammany Parishes.

#### **§ 1. Waste Water Treatment Systems**

a. Storm Water Discharges by U.S. Army Corps of Engineers

The Department hereby authorizes the U.S. Army Corps of Engineers to discharge storm water runoff from construction activities related to hurricane response activities in the Emergency Areas. Best Management Practices to avoid erosion and offsite transport of sediments are to be implemented to the greatest extent practicable. The Storm Water General Permit For Construction Activities Five (5) Acres Or More (LAR100000) can be accessed on the LDEQ website at <http://www.deq.louisiana.gov/portal/Portals/0/permits/lpdes/LAR100000.pdf>, and contains applicable Best Management Practices for erosion and sediment controls in Part IV. Storm Water Pollution Prevention Plans.

**§ 2. Solid Waste Management**

a. Disposal or processing of any solid waste in or at unpermitted facilities or sites may be authorized by the Department on a case-by-case basis.

b. Except as provided below, the sites listed herein are the exclusive sites authorized to dispose of hurricane generated construction and demolition debris pursuant to this Order:

- Gentilly Landfill, 10200 Almonaster Avenue, New Orleans, La. (AI# 1036)
- Highway 90 Landfill, 5000 Highway 90, Avondale, La. (AI# 100642)
- River Birch Landfill, 2000 S. Kenner Ave., Avondale, La. (AI# 32219)
- Tidewater Sanitary Landfill, 339 Coast Guard Rd., Venice, La. (AI# 20061).

All other facilities or sites authorized pursuant to previous versions of this Order that have received construction and demolition debris for disposal without a standard permit were required to cease accepting waste on or before April 20, 2007. The Department has issued an order to the owner and/or operator of each such facility requiring that the facility be properly closed on or before June 20, 2007 in accordance with the Solid Waste Regulations, La. Admin. Code 33:VII.

All other permitted facilities that have received construction and demolition debris for disposal pursuant to previous versions of this Order are authorized pursuant to this Order to receive and dispose of construction and demolition debris until April 20, 2007. Thereafter, these permitted facilities shall only

operate in accordance with the terms and conditions of their permits and the Solid Waste Regulations, La. Admin. Code 33:VII.

For purposes of this Order, construction and demolition debris shall be the materials indicated in Appendix A of this Declaration. Uncontaminated construction and demolition debris may be managed at a temporary staging area authorized by the Department. Uncontaminated construction and demolition debris that is mixed with other uncontaminated Hurricane-generated debris, such as white goods or household hazardous waste, should be segregated from other solid waste prior to disposal in a permitted landfill or authorized disposal site.

On April 20, 2007, Killona Ventures, L.L.C. filed a Petition for Injunctive Relief against the department in the 19th Judicial District Court (Case # 554-487) concerning the operation of the Killona Ventures Construction and Demolition landfill (AI# 92039) in St. Charles parish. On May 8th, 2007, the court signed an "Order and Judgment Granting Preliminary Injunction." The Order provided in part that:

"defendants Louisiana Department of Environmental Quality and Dr. Mike D. McDaniel in his official capacity as Secretary of the Louisiana Department of Environmental Quality, together with their agents, employees, representatives, attorneys and all person acting in concert or participation with them and all other persons with actual knowledge of this Order, shall be and hereby are enjoined and restrained from directly or indirectly revoking, precluding, obstructing, or otherwise interfering with Killona's ability, authorization, and/or permit to receive and dispose of hurricane generated construction and demolition debris containing [sic] as defined in Appendix 'D' to Louisiana Department of Environmental Quality's Fifth Amended Declaration of Emergency and Administrative Order (AI No. 130534) dated March 31, 2006, and/or construction and demolition debris or [sic] assumed to contain regulated asbestos containing material or asbestos containing waste material;

"IT IS FURTHER ORDERED that defendants Louisiana Department of Environmental Quality and Dr. Mike D. McDaniel in his official capacity as Secretary of the Louisiana Department of Environmental Quality, together with their agents, employees, representatives, attorneys and all person acting in concert or participation with them and all other persons with actual knowledge of this Order, be and are hereby enjoined and restrained from directly, indirectly revoking, rescinding, precluding, obstructing, or

otherwise interfering with plaintiff's ability or authorization to operate as a recognized and fully authorized and permitted Enhanced Type III Construction and Demolition Debris Landfill ...."

c. White goods (i.e., unsalvageable air conditioners, stoves and range tops, as well as refrigerators and freezers from which food has been removed) shall be stored in an area separate from other solid wastes and shall be stored in a manner that prevents vector and odor problems. No white goods may be stored in or on any permitted landfill cells that have not undergone final closure and have not received written authorization from the Department specifically allowing storage in that area. All white goods shall be removed from the storage facility or staging area and sent offsite for recycling, or recycled onsite, within ninety (90) days of initial receipt at the site.

d. Putrescible waste (e.g., rotting food that has been removed from unsalvageable refrigerators and freezers) shall be disposed of in a permitted Type II landfill.

e. Authorizations may be issued prior to or following a site inspection by Department personnel for staging areas to be used for temporary storage and chipping, grinding or burning of Hurricane-generated debris. Authorizations may be requested by providing a notice to the Department containing a description of the staging area design and operation, the location of the staging area, and the name, address, and telephone number of the site manager as described in Department correspondence dated September 13, 2004, to the Parish Governing Authorities.

f. Construction and demolition debris generated from residential structures of four units or less that are subject to a government-ordered demolition, and that are assumed to contain potential asbestos-containing waste material (ACWM), shall be disposed of in a permitted Type I or II landfill or an "enhanced" construction and demolition debris (C&D) landfill that has been authorized by the Department in accordance with LDEQ requirements (Appendix C1). A request by a landfill owner or operator for authorization to accept such ACWM must include a certification that the owner or operator will manage the ACWM in accordance with the landfill's QA/QC plan and LDEQ requirements. See Section 5, *Asbestos Clean-up*, of this Order, for additional information on receiving ACWM in Type I and II Landfills, C&D Landfills, and "enhanced"



C&D landfills. The Department will provide a written response to the request for authorization to accept solid waste and asbestos containing waste material in a Type I or II landfill, or a Type III landfill.

g. Waste Tires

The Secretary of the Louisiana Department of Environmental Quality finds that the unprecedented conditions resulting from Hurricanes Katrina and Rita has caused or contributed to an extraordinary drain on State of Louisiana resources and in particular the Waste Tire Management Fund (WTMF) provided for in La. R.S. 30:2418. Those conditions include the damaging and/or abandonment of approximately three hundred and fifty thousand (350,000) or more automobiles in the affected areas. Most of these vehicles will be salvaged or scrapped, with the four to five tires on each vehicle being sent for either disposal, resale, and or recycling. This sudden influx of waste tires and used tires into the system will result in an inordinate immediate drain on the WTMF and an inability to properly account for the diversion of tires to recycling projects and for resale. At the time of this declaration, Parish Collection Centers are accepting tires from debris collection activities, resulting in an immediate drain on the WTMF. As a result of these conditions, the Secretary does hereby order the following:

i) All tires removed from vehicles within the affected areas that are salvaged and/or scrapped because of damage resulting from Hurricane Katrina shall be tracked and are ineligible for payment from the WTMF.

ii) All tires that are collected in the affected areas through hurricane debris collection activities and deposited at Parish Collection Centers will be ineligible for payment of the WTMF subsidy, but are to be treated as debris under existing debris removal programs. Tires presently on site at Parish Collection Centers must be classified for either recycling under existing approved beneficial uses, or for resale. Any person who claims for resale any tires from salvaged or scrapped vehicles in the affected area shall report to the Department the number of such tires classified for resale, and their destination, within fifteen (15) days.

iii) All tires that are removed from automobiles in the affected area that are destined for salvage because of damage resulting from Hurricane

Katrina must be collected, transported, and either recycled or disposed of with an accompanying manifest that lists the tires as being ineligible for the WTMF. If the tires are deemed "used tires" for resale, such a declaration must be reported to the Department by the person responsible for removal of the tires from the vehicle being scrapped and or salvaged. The report must contain the VIN number of the vehicle being scrapped and or salvaged, the number of tires being removed, the number being classified for resale, and the number classified for recycling and/or disposal.

iv) Eligibility of tires for the WTMF subsidy shall be governed by the most current version of this document, and prior versions of this document are hereby superseded.

### **§ 3. Hazardous Waste**

Hazardous waste generated as a result of the hurricane event must be separated from other hurricane-generated waste and disposed of at a permitted hazardous waste disposal facility. Household wastes collected during this event, which are exempt from the regulatory requirements applicable to hazardous wastes, must be managed not only in an environmentally sound manner but also in accordance with the appropriate LDEQ rules and regulations governing the storage and processing of this type of waste.

### **§ 4. Open Burning**

The Department will consider, on an individual basis, requests for approval for open burning, by persons other than local governments or their agents, of Hurricane-generated trees, leaves, vines, twigs, branches, grass, and other vegetative debris. Any such burning approved by the Department must be conducted in compliance with the requirements of LAC 33:III.1109.D.6.

### **§ 5. Asbestos Clean-up**

a. The Department waives the requirement for prior notification for emergency demolition or emergency cleanup of asbestos-containing material resulting from the

Hurricane. Within one (1) business day of commencing such demolition or cleanup, however, the person responsible for such work shall notify the Department in writing. The notification shall be submitted on the Asbestos Notification of Demolition or Renovation Form AAC-2, which may be found at <http://www.deq.louisiana.gov/portal/Portals/0/permits/AsbestosandLead/AAC-2%20Asb%20Not%20Form%20022106.doc>. The procedures in LAC 33:III.5151 (demolition/renovation) and LAC 33:III.Chapter 27 (accreditation and training requirements) for handling asbestos-containing material shall be complied with during demolition, cleanup, transportation, and disposal, except as otherwise provided herein. Construction and demolition debris generated from residential structures of four units or less that are subject to a government ordered demolition and that are assumed to contain potential asbestos-containing waste material shall be disposed of in a permitted Type I or II landfill or an "enhanced" C&D landfill that has been authorized by the Department in accordance with LDEQ requirements (Appendix C). Burning of asbestos-containing material is prohibited.

b. Any person handling debris or conducting activities associated with the renovation or demolition of residential structures of four (4) units or less that are subject to government-ordered demolition must comply with the USEPA's No Action Assurance letters dated February 3, 2006, February 24, 2006, February 2, 2007, and September 28, 2007 respectively, and the LDEQ guidance, all of which is contained in Appendix C.

c. The Department waives the requirement pursuant to LAC 33:III.2799.E.2.b.ii, that applicants receiving training from providers not recognized by the state of Louisiana also submit proof of training in current Louisiana asbestos regulations (see LAC 33:III.2799.F.5.g).

d. The Department waives the requirement pursuant to LAC 33:III.2799.F.5.c.i that recognized asbestos Training Providers give the Department notice at least five (5) days prior to class commencement. (Notification must be made at least three (3) days prior to a course when only the state regulations are to be taught.) Notice shall be provided to the department within 24-hours of class commencement.

e. Local education agencies and state government may make emergency use of a building as a school or state building. The agency making use of the building

may request an extension of the deadline to inspect the building within four (4) months of the decision to use the building pursuant to LAC 33:III.2707.A.2.

f. The Department waives the requirement pursuant to LAC 33:III.2723.A.2 that the local education agency or state government must submit a management plan prior to any building's use as a school or state building. A management plan shall be submitted within six (6) months of the initial use of the building.

g. In addition to the qualifications established by LAC 33:III.2799.D.3, the Department may accredit as an "abatement project designer" any individual who:

i) has a Bachelor of Science in a related scientific field with five (5) years experience as a Contractor/Supervisor working under the direction of a Louisiana Accredited Project Designer, planning and implementing asbestos abatement projects;

ii) has at least ten (10) years experience as a Contractor/Supervisor working under the direction of a Louisiana Accredited project Designer, planning and implementing asbestos abatement projects; and

iii) has completed an application developed by the Department, and received signatures from two (2) Louisiana accredited Project Designers indicating that the applicant has the knowledge and skills to perform this type of work.

h. The fee charged for the Emergency Processing of Worker Accreditation for Asbestos (i.e., LAC 33:III.223, Fee #2070) shall be reduced to \$66.00 (i.e., the same fee as for normal processing, Fee #2060).

i. The fee charged for the Emergency processing of Asbestos Notification of Demolition and Renovation Form AAC-2 (i.e. LAC 33:III.223, Fee code # 2030) shall be reduced to \$66 (sixty-six dollars) for FEMA-financed Hurricane related demolition of residential structures of four (4) units or less, subject to a government ordered demolition.

j. The Department shall generate a single Asbestos Disposal Verification Form ("ADVF") per day, per landfill, per contractor, per parish, for FEMA-financed Hurricane-related demolitions for use with multiple loads of C&D debris that contains asbestos containing waste material, notwithstanding any provision to the contrary in

LAC 33:III.5151.F.2.g. The Department will also generate a blank "Addendum to ADVF for Transportation and Disposal of AWCM," which will accompany the ADVF and which is to be completed and signed by the contractor and landfill operator. Detailed instructions and a sample Addendum are available on the Department's Website under **\*\*Special Interest - Hurricane Related: Please Take Note\*\*** on the Asbestos and Lead web page at <http://www.deq.louisiana.gov/portal/Default.aspx?tabid=2251>, or by contacting the Asbestos and Lead Section at 225-219-3032.

**§ 6. Special Waste (Reuse and Recycle)**

Every effort should be made to minimize the disposal of reusable and recyclable material in landfills. Diversion, composting and recycling debris are priorities. Debris handlers should make every effort to properly handle and recover debris materials that have reuse value, are recyclable or the release of which into the environment would be detrimental or is prohibited, e.g. used motor oil. Appendix B lists special waste from specific sources (households, businesses, schools, public buildings, automobiles and boats) and references the LDEQ Comprehensive Plan for Disaster Clean-up and Debris Management (<http://www.deq.louisiana.gov/portal/portals/0/news/pdf/DEQDebrisPlan-8-25-FINAL.pdf>), which provides information intended to assist operators of solid waste facilities, recycling centers, scrap metal dealer, local governments, contractors, and the general public in handling of certain debris from the Emergency Areas.

**§ 7. Public Notice and Public Participation Procedures Regarding Proposed Permit Actions**

a. In Orleans and St. Bernard Parishes, in addition to the required public notice procedures provided in LAC Title 33, an additional newspaper will be selected in which to publish the notices. This will be the newspaper with the largest circulation in a parish that physically adjoins the parish in which the facility is located. If not already required to do so, the Department will publish the notices in *The Advocate*, the official state journal. The Department may revise this procedure before the expiration of this Order. Notice of any such revision will be provided on the Department's website

([www.deq.louisiana.gov](http://www.deq.louisiana.gov)) and published as a "Potpourri" notice in the Louisiana Register.

b. In the remainder of the Emergency Areas, public notice and public participation procedures will be as provided in LAC Title 33.

**§ 8. General Conditions**

a. This Emergency Order does not convey any property rights or any rights or privileges other than those specified in this Order.

b. This Emergency Order only serves as relief for the duration of the Order from the regulatory and proprietary requirements of the Department, and does not provide relief from the requirements of other federal, state, and local agencies. This Order therefore does not negate the need for the property owner or facility operator to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies.

**§ 9. General Limitations**

The Department issues this Order solely to address the emergency created by the Hurricane. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or otherwise.

**§10. Other Authorizations Required**

Nothing in this Order shall eliminate the necessity for obtaining any other federal, state, or local permits or other authorizations that may be required.

**§ 11. Completion of Authorized Activities**

All activities authorized under this Emergency Order must be commenced before the expiration of this Order unless otherwise provided in an authorization or permit. The deadline for commencement under any authorization or permit issued under this order

may be extended on a showing that contractors or supplies are not available to commence the work, or if additional time is needed to obtain any required authorization from the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, or other local, state, or federal agencies.

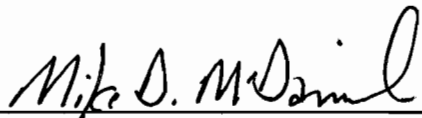
**§ 12. Amendments**

This Order may be amended as required to abate the emergency.

**§ 13. Expiration Date**

This Twelfth Amended Declaration of Emergency and Administrative Order shall take effect immediately upon execution by the Secretary of the Department, and shall expire in sixty (60) days from the date of execution set forth below, unless modified or extended by further order.

**DONE AND ORDERED** on this 30<sup>th</sup> day of September, 2007, in Baton Rouge, Louisiana.

  
\_\_\_\_\_  
Mike D. McDaniel, Ph.D. Secretary

## APPENDIX A

### HURRICANE GENERATED MATERIALS ALLOWED AT A PERMITTED CONSTRUCTION AND DEMOLITION DEBRIS (C&D) LANDFILL OR DEPARTMENT AUTHORIZED SITE

The following hurricane generated materials shall be allowed for disposal at a permitted construction and demolition debris (C&D) landfill or a Department authorized site<sup>1</sup>:

- Nonhazardous waste generally considered not water-soluble, including but not limited to metal, concrete, brick, asphalt, roofing materials, sheet rock, plaster, lumber from a construction or demolition project, and other building or structural materials;
- Furniture, carpet, and painted or stained lumber contained in the demolished buildings;
- The incidental admixture of construction and demolition debris with asbestos-contaminated waste<sup>2</sup>. (i.e., incidental asbestos-contaminated debris that cannot be extracted from the demolition debris); and
- Yard waste and other vegetative matter.

The following materials shall not be disposed in a construction and demolition debris landfill, but segregated and transported to a Department approved staging area for eventual management, recycling and/or disposal at a permitted Type II Landfill, unless it is not practicable to segregate such wastes at any point prior to disposal:

- White goods
- Putrescible Waste

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<sup>1</sup> In accordance with the Comprehensive Plan for Disaster Clean-Up and Debris Management prepared by the LDEQ (dated July 2006), the presence of hazardous materials, electronic goods, etc. shall be minimized to the extent possible through local government requirement that contractors remove and properly handle household hazardous materials, such as: paints and varnishes, solvents, acids, pesticides, cleaning fluids, pool chemicals, used motor oil, propane tanks, mercury thermostats, liquid mercury, mercury containing devices, smoke detectors and refrigerants, and electronic goods such as: televisions, computers/computer peripherals, audio/video equipment, VCR's DVD players, video cameras, telephones, fax and copy machines, cell phone, wireless devices and video game consoles. An example of such a requirement can be found in the Scope of Work for the Structural Demolition, Debris Removal and Site Cleanup Work, Orleans Parish in Louisiana between the U.S. Army Corps. of Engineers and Orleans Parish, in particular sections: 2.2, 3.0, 4.1 a) & c), 5.2, and 6.3. This is not a substantive change from prior Declarations of Emergency and Administrative Orders, but a clarification of the agency's intent.

<sup>2</sup> This provision is, and in prior Declarations of Emergency and Administrative Orders has been, intended to provide an authorized deviation from the definition of "Construction/Demolition Debris provided in LAC 33:VII.115. Any Asbestos Containing Waste Material subject to regulation under the Air Quality Regulations (Louisiana Emission Standards for Hazardous Air Pollutants [LESHAP - LAC 33:III.5151] or the National Emission Standard for Hazardous Air Pollutant [NESHAP - 40 CFR 61.140 et. seq]) shall be managed and disposed of in accordance with the standards established therein as provided in the protocols established in Appendix D.



## APPENDIX B

### GUIDANCE FOR SPECIAL WASTE HANDLING, REUSE AND RECYCLING

The following information is intended to assist operators of solid waste facilities, recycling centers, scrap metal dealer, local governments, and contractors in handling debris from the Emergency Areas. The FEMA Debris Plan should be consulted for greater detail.

#### **1. Intent**

Every effort should be made to minimize debris disposed in landfills. Diversion, composting and recycling debris are priorities. Debris handlers should make every effort to properly handle and recover debris materials that have reuse value, are recyclable or the release of which into the environment would be detrimental or is prohibited, e.g. used motor oil.

#### **2. Scope**

Sources of debris requiring special handling include: households, businesses, schools, public buildings, automobiles and boats.

#### **3. Types of materials by source**

The types of debris to which this guidance is directed and the sources from which the subject debris emanates are as follows:

- a. From automobiles: gasoline and diesel fuel, refrigerants, lubricating oils, mercury ABS switches, mercury convenience switches, lead acid batteries, brake and transmission fluid, antifreeze and tires. Propane tanks and large appliances in recreational vehicles should be removed.
  - b. From boats: gasoline and diesel fuel, refrigerants, lubricating oils, mercury bilge switches, propane tanks, large appliances, lead acid batteries, transmission fluid and electronics, such as, radar sets, radios, GPS units, and depth finders.
  - c. From households and businesses: paints and varnishes, solvents, acids, pesticides, cleaning fluids, pool chemicals, used motor oil, propane tanks, mercury thermostats, liquid mercury, mercury-containing devices, and refrigerants. Large appliances also known as "white goods" may not be landfilled. Refrigerants must be removed. Food should not be left in appliances. Every reasonable effort should be made to recover large electronic devices, such as, television sets, computers and computer monitors.
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- d. From schools and public buildings: paints and varnishes, solvents, acids, pesticides, cleaning fluids, pool chemicals, used motor oil, propane tanks, mercury thermostats, liquid mercury, mercury-containing devices, and refrigerants. Large appliances also known as "white goods" may not be landfilled. Refrigerants must be removed. Food should not be left in appliances. Every reasonable effort should be made to recover large electronic devices, such as, television sets, computers and computer monitors. Special attention should be given to school chemistry laboratories.

### **3. Monitoring**

Demolition teams, debris collectors, local governments and landfill operators should be vigilant for proper handling the above listed items.

### **4. Recordkeeping**

Processors should keep a record of the amount of materials recovered and transported for recycling. Some products already require recordkeeping, e.g. used oil, and duplicate recordkeeping is not required.

## **APPENDIX C**

### **Asbestos Cleanup Guidance Documents**

- C1 LDEQ Requirements for "Enhanced" C & D Landfills, Revised June 28, 2006
- C1A Sample Perimeter Monitoring Plan
- C2 Air Monitoring Report for Enhanced C&D Landfills
- C3 "No Action Assurance" Letter, Nakayama to McDaniel, February 3, 2006
- C4 "No Action Assurance" Letter, Nakayama to McDaniel, February 24, 2006
- C5 LDEQ Protocol to Comply with the LESHAP Regulations, 05/10/2006
- C6 Letter, Blevins to Leggett, March 1, 2006
- C7 LDEQ Inspection Protocol to comply with the term, "thorough inspection"
- C8 Louisiana Hurricane NESHAP Matrix, February 2, 2007
- C9 "No Action Assurance" Letter, Nakayama to McDaniel, February 2, 2007
- C10 "No Action Assurance" Letter, Nakayama to McDaniel, September 28, 2007

## APPENDIX C1

### LDEQ REQUIREMENTS FOR "ENHANCED" C & D LANDFILLS

Revised June 28, 2006

The site must give prior notice to the LDEQ in advance of initiation of implementation of enhanced C&D activities. Each owner or operator of an enhanced construction and demolition debris (C&D) landfill that receives asbestos-containing waste material (ACWM) shall meet the following requirements:

1. Adequate Perimeter Air Monitoring shall be conducted for the presence of asbestos fibers to evaluate and ensure the effectiveness of engineering and operational controls designed to prevent off-site migration of asbestos fibers. Receptors will primarily be workers at the site and drivers delivering waste material, therefore OSHA protection standards should be considered. The plan must be submitted to LDEQ along with a completed AAC-7 for review and approval. See **Appendix C1A** for an example of a perimeter monitoring plan.

#### a. Sample Methods

- i. Perimeter monitoring shall be conducted in accordance with NIOSH method 7400. Calibrate an SKC or equivalent sampling pump and collect approximately 1 liter per minute (L/min) of air into the filter. This method uses PCM, which is not specific for asbestos.
- ii. NIOSH method 7402 uses TEM to confirm presence or absence of asbestos fibers.
- iii. All perimeter air monitoring samples must be conducted by LDEQ accredited Contractor/Supervisors,
- iv. All samples must be analyzed at a Louisiana Environmental Laboratory Accreditation Program (LELAP) accredited laboratory to perform the sample method.
- v. Sample turn-around time should be no greater than 48 hours.
- vi. All samples and sample results are subject to these requirements

#### b. Detection Limits and OSHA limits

- i. The sample method detection limit shall be 0.01 – 0.02 f/cc
- ii. The OSHA permissible exposure limit (PEL) for asbestos fibers is 0.1 f/cc.
- iii. The OSHA excursion or short-term limit is one fiber per cubic centimeter of air (1 f/cc)

c. Minimum Frequency of Sampling during Disposal of ACWM (unless otherwise approved by the department).

1. First Week – sample daily
2. 2<sup>nd</sup> Week – daily if all available results of first week samples are below acceptable levels
3. If results of 2<sup>nd</sup> week samples confirm results of first week, sampling goes to 1/week

d. Record Keeping

- i. Chain of Custody documentation shall be kept to document and verify samples.
- ii. Calibration checks shall also be recorded
- iii. All records required by this section shall be maintained for 2 years
- iv. All records required by this section shall be maintained on-site and be made available for inspection purposes or at the request of the Department.

e. Notification and Response Actions

- i. The operator of an enhanced C&D landfill shall notify LDEQ's Single point of Contact (SPOC) at 225-219-3640 immediately (within 1 hour) upon receipt of sample results indicating the presence of asbestos fibers above the OSHA PEL of 0.1 f/cc.
- ii. Operations at the enhanced C&D landfill shall immediately cease upon receipt of sample results indicating the presence of asbestos fibers above the OSHA PEL of 0.01 f/cc. The operator of the enhanced C&D landfill shall investigate site operations to determine the source of the asbestos fibers.
- iii. Results of the incident shall be reported in writing to SPOC within 24 hours of completion of the investigation.
- iv. The operator of the enhanced C&D landfill will determine and implement appropriate corrective action. These corrective actions must be submitted to the Department in writing for review within 10 days of the incident.
- v. Once the corrective action has been approved by the Department, the enhanced C&D landfill may begin site operations. However frequency of sampling shall return to daily. Procedures in Section 1.b above must be followed to return to a weekly sampling frequency.

f. Reporting

- i. Results of all monitoring and sampling results must be reported to the Department
  - ii. During the first quarter (3 month period) of operation, monitoring and sampling results must be reported monthly
  - iii. After the first quarter of operation, monitoring and sampling results must be reported semi-annually (every six months)
  - iv. Use the DEQ approved air monitoring report form (see **Appendix C2**) or other form approved by LDEQ. The forms shall be submitted to the Office of Environmental Services, Air Permits Division, ATTN: Jodi Miller.
2. ACWM shall be placed in a dedicated area separate from C&D waste areas
3. No Visible Emissions allowed and Daily Cover must be applied.
- a. There must be no visible emissions to the outside air from any active waste disposal site where ACWM has been deposited;
  - b. At least once every 24-hour period while the site is in continuous operation, the ACWM that has been deposited at the site during the operating day or previous 24-hour period shall:
    - i. Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, **or**
    - ii. Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Department. Used, spent, or other waste oil is not considered a dust suppression agent; **or**
    - iii. Use an alternative emissions control method that has received prior written approval by the EPA Administrator by demonstrating that the following criteria are met:
      - 1) The alternative method will control asbestos emissions equivalent to currently required methods.
      - 2) The suitability of the alternative method for the intended application.
      - 3) The alternative method will not violate other regulations.

- 4) The alternative method will not result in increased water pollution, land pollution, or occupational hazards.
4. Unless a natural barrier adequately deters access by the general public, warning signs and fencing must be installed and maintained as follows:
- a. Warning signs must be displayed at all entrances and at intervals of 100 m (330 ft) or less along the property line of the site or along the perimeter of the sections of the site where ACWM is deposited. The warning signs must:
    - i. Be posted in such a manner and location that a person can easily read the legend; and
    - ii. Conform to the requirements of 51 cm × 36 cm (20 inch × 14 inch) upright format signs; and
    - iii. Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified below

Legend	Notation
<i>Disposal Site May Contain Asbestos Containing Waste Material or Block</i>	2.5 cm (1 inch) Sans Serif, Gothic
<i>Do Not Create Dust Block</i>	1.9 cm (3/4 inch) Sans Serif, Gothic or
<i>Breathing Asbestos is Hazardous to Your Health</i>	14 Point Gothic.

- b. The perimeter of the disposal site must be fenced in a manner adequate to deter access by the general public.
  - c. Upon request and supply of appropriate information, the Department will determine whether a fence or a natural barrier adequately deters access by the general public.
5. For all ACWM received, the owner or operator of the active waste disposal site shall:
- a. Maintain waste shipment records, using the LDEQ ADVF form.
  - b. As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator and the Office of Environmental Services, Air Permits Division.
  - c. Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to LDEQ, Office of Environmental Services, Air Permits Division and

the appropriate LDEQ Regional office. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

- d. Retain a copy of all records and reports required by this paragraph for at least 2 years.
6. Maintain, until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of ACWM within the disposal site on a map or diagram of the disposal area.
7. Upon closure, comply with all the provisions of LAC 33:III.5151.N.
8. Submit to the Department, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.
9. Furnish upon request, and make available during normal business hours for inspection by the Department, all records required under this section.
10. Notify the Department in writing at least 45 days prior to excavating or otherwise disturbing any ACWM that has been deposited at a waste disposal site and is covered. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Department at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:
  - a. Scheduled starting and completion dates.
  - b. Reason for disturbing the waste.
  - c. Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated ACWM. If deemed necessary, the Department may require changes in the emission control procedures to be used.
  - d. Location of any temporary storage site and the final disposal site.



## **APPENDIX C1A**

### **SAMPLE PERIMETER MONITORING PLAN**

#### **A. Perimeter Sampling**

1. Sampling location determined daily
2. Consider wind direction and speed using weather forecasts and on-site wind indicator
3. Sample 2 downwind and 2 upwind locations
4. The set-back from public access areas should be 100 feet

#### **B. Frequency of Sampling during Disposal of ACWM**

1. First Week – sample daily
2. 2<sup>nd</sup> Week – daily if all available results of first week samples are below acceptable levels
3. If results of 2<sup>nd</sup> week samples confirm results of first week, sampling goes to 1/week.

#### **C. Detection Limit and Action Levels**

1. The sample method detection limit shall be 0.01 – 0.02 f/cc
2. The OSHA permissible exposure limit (PEL) for asbestos fibers is 0.1 f/cc.
3. The OSHA excursion or short-term limit is one fiber per cubic centimeter of air (1 f/cc)
4. If phase contrast microscopy (PCM), results exceed ½ of the OSHA PEL (or 0.05 f/cc), transmission electron microscopy (TEM) analyses must be performed.

#### **D. Sample Methods**

1. Perimeter monitoring shall be conducted in accordance with NIOSH method 7400. Calibrate an SKC or equivalent sampling pump and collect approximately 1 liter per minute (L/min) of air into the filter. This method uses PCM, which is not specific for asbestos.
2. NIOSH method 7402 uses TEM to confirm presence or absence of asbestos fibers.

3. All samples must be analyzed at a Louisiana Environmental Laboratory Accreditation Program (LELAP) accredited laboratory to perform the sample method.
4. Sample turn-around time should be no greater than 48 hours.
5. Samples may be taken more frequently than required, but all samples and sample results are subject to these requirements

#### E. Record Keeping

1. Meteorological data (wind speed and direction) shall be recorded daily whenever disposal activities occur.
2. Chain of Custody documentation shall be kept to document and verify samples.
3. Calibration checks shall also be recorded
4. All records required by this section shall be maintained for 2 years
5. All records required by this section shall be maintained on-site and be made available for inspection purposes or at the request of the Department.

#### F. Notification and Response Actions

1. The operator of an enhanced C&D landfill shall notify LDEQ's Single point of Contact (SPOC) at 225-219-3640 immediately (within 1 hour) upon receipt of sample results indicating the presence of asbestos fibers above the OSHA PEL of 0.1 f/cc.
2. Operations at the enhanced C&D landfill shall immediately cease upon receipt of sample results indicating the presence of asbestos fibers above the OSHA PEL of 0.1 f/cc. The operator of the enhanced C&D landfill shall investigate site operations to determine the source of the asbestos fibers.
3. Results of the investigation shall be reported in writing to SPOC within 24 hours of completion of the investigation.
4. The operator of the enhanced C&D landfill will determine and implement appropriate corrective action. If necessary, these corrective actions must be approved by the Department prior to implementation.
5. Once the corrective action has been approved by the Department, the enhanced C&D landfill may begin site operations. However frequency of sampling shall return to daily. Procedures in Section 1.b above must be followed to return to a weekly sampling frequency.

## G. Reporting

1. Results of all monitoring and sampling results must be reported to the Department
2. During the first quarter (3 month period) of operation, monitoring and sampling results must be reported monthly
3. After the first quarter of operation, monitoring and sampling results must be reported semi-annually (every six months)
4. Use the DEQ approved air monitoring report form (see **Appendix C2**) or other form approved by LDEQ. The forms shall be submitted to the Office of Environmental Services, Air Permits Division, ATTN: Jodi Miller.

## Air Monitoring Report for Enhanced C&D Landfills

[illegible]

## APPENDIX C3

### "No Action Assurance" Letter, Nakayama to McDaniel, February 3, 2006



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 3 2006

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.  
Secretary  
Louisiana Department of Environmental Quality  
P. O. Box 4301  
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

This letter is in response to a January 24, 2006 electronic mail message from Cheryl Nolan of your staff transmitting a draft Protocol from the Louisiana Department of Environmental Quality (LDEQ) developed to provide guidance on compliance with applicable asbestos standards during the demolition of houses and disposal of resulting debris in response to Hurricane Katrina and Hurricane Rita. Staff from EPA Headquarters and EPA Region 6 have had a number of conversations with LDEQ staff in the past week, and EPA understands that LDEQ wishes to explore potential flexibility to facilitate the parts of the Protocol that contemplate 1) the grinding of debris containing potentially regulated asbestos containing material to reduce its volume and 2) treating certain homes (e.g., those built after 1980) as not containing regulated asbestos. The purpose of this letter is to explain how EPA would like to proceed to resolve these issues and to provide some interim flexibility with respect to federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements that will allow additional demolition to go forward as we continue to work on these issues.

During recent phone calls with EPA regional and headquarters staff, LDEQ identified several issues that are adversely affecting the speed of demolition and debris disposal and which it seeks to address in its Protocol. These issues include limited landfill space that can accept asbestos contaminated material, the sheer volume of debris which must be transported and placed in the landfills, and the number of houses that must be demolished and which are subject to the Clean Air Act NESHAP asbestos inspection requirements and/or the emission control and disposal requirements.

EPA recognizes the tremendous challenge to demolish homes severely damaged by the hurricanes and dispose of the huge amounts of debris as expeditiously as possible. On my recent visit to the New Orleans area, which members of LDEQ staff and management graciously hosted, I saw the actual level of Hurricane Katrina's devastation, and it brought home the need to work closely with Louisiana to explore options that will provide a reasonable path forward on demolition and disposal activities that will also be protective of the public and the environment. EPA appreciates that LDEQ has already agreed in the past week to several modifications to the approach laid out in the draft Protocol to address the Agency's concerns regarding the consistency of the Protocol with federal and state requirements. EPA is committed to continuing to work closely with LDEQ to try to resolve the "grinding" issue expeditiously and discuss the "post-1980" and other debris management issues soon after that.

As EPA staff has discussed with LDEQ staff over the past week, EPA needs to receive and evaluate additional information to make decisions as to whether to grant a No Action Assurance for these

options. LDEQ has agreed to provide additional information on landfill capacity and data on grinding activities, e.g., air monitoring data from sites where grinding debris from completely destroyed areas (on the ground debris) has taken place. EPA applauds the efforts that LDEQ and the U.S. Army Corps of Engineers have made to develop such data and will expedite its review and evaluation of the data, in consultation with LDEQ, once the Agency receives the information.

As EPA and LDEQ work to address grinding and other issues, we understand from Region 6 that LDEQ has requested flexibility to expedite the demolition of certain structures. The first part of LDEQ's request is to allow certain residences subject to a government demolition order to be treated as though they have been determined to be structurally unsound and in danger of imminent collapse. The asbestos NESHAP exempts structures being demolished under a government demolition order, issued because the structure is unsound and in danger of imminent collapse, from the 10 day notification requirement and from the requirement to inspect and remove asbestos provided specific emission control procedures (e.g., trained supervisor, asbestos NESHAP demolition work practices) are followed. See 40 CFR § 61.145(a)(3). The NESHAP transport and disposal requirements also apply to the debris from these demolitions.

In light of the widespread destruction from the hurricanes, EPA understands that demolition orders may be issued for a variety of reasons. Such circumstances include houses found to be structurally unsound and in danger of imminent collapse, houses found to be structurally unsound, houses moved off their foundations (but which may not have been inspected by a structural engineer), houses found to be uninhabitable (but structurally sound), or houses facing repair costs higher than the structure's replacement cost. Such decisions are and remain the responsibility of state or local governments.

Given the unprecedented situation faced by the State, EPA is granting a No Action Assurance for the asbestos NESHAP, 40 CFR Part 61, Subpart M, to allow residences that are subject to a government issued demolition order based on the residence being 1) structurally unsound but not necessarily in danger of imminent collapse, or 2) moved off of its foundation, to be treated as though the demolition order is based on a determination that the house is structurally unsound and in danger of imminent collapse. This No Action Assurance will allow such houses to be demolished without inspection and removal of asbestos prior to demolition but will ensure adequate protections through the requirements of the asbestos NESHAP. These requirements include notification, handling, transportation and disposal procedures (e.g., thorough wetting of the material from before the demolition process through disposal). Although not a requirement, EPA recommends thoroughly wetting the interior to the extent possible through window or door openings and/or through openings made into the attic spaces from the exterior prior to the demolition. This No Action Assurance does not apply to structurally sound residences that are being demolished due to the house being uninhabitable or due to the cost of repair being greater than the replacement cost.

The second part of LDEQ's request seeks flexibility regarding government issued demolition orders which are based on broad determinations for groups of houses. EPA agrees that, given the severe and widespread devastation, it may not be practical for state or local officials to make an individual determination for every residential structure regarding whether the house is structurally unsound and in danger of imminent collapse. LDEQ staff have stated that significant delays would result from a requirement to conduct individual structural assessments for every affected residence. In light of these valid concerns and the need to proceed with the recovery effort in a timely manner, EPA is granting LDEQ a No Action Assurance for the asbestos NESHAP to treat a government issued demolition order based on a determination made by the state or local government for groups of residences, e.g., a block, a subdivision,

or other appropriate geographic area, the same as an order based on an individual determination for each of the residences in the group.

These No Action Assurances will be in effect for twelve months from the date of this letter and apply only to the demolition of those houses in Louisiana that were damaged by Hurricane Katrina or Hurricane Rita and which are subject to a government issued demolition order. Consistent with the NESHAP, the No Action Assurances apply only to residences that have four or fewer units. The No Action Assurances apply to LDEQ and persons operating at LDEQ's direction, and the U.S. Army Corps of Engineers and persons operating at the Corps' direction. EPA reserves the right to revoke or modify these No Action Assurances if the Agency believes that such action is necessary to protect the environment or public health.

EPA recognizes that the State faces extraordinarily difficult circumstances in cleaning up the huge quantity of debris generated by Hurricanes Katrina and Rita. EPA will continue to work with LDEQ to address the "grinding" and "post-1980" issues and to identify and address other instances where regulatory flexibility may be appropriate. If you have any questions, please call me at 202-564-2440, or have your staff call Randy Hill of my staff at 202-564-2220 or John Blevins of EPA Region 6 at 214-665-2210.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator

cc: J. I. Palmer, Jr., Regional Administrator, Region 6  
Richard Greene, Regional Administrator, Region 4  
Hal Leggett, LDEQ  
Chuck Carr Brown, LDEQ  
Cheryl Nolan, LDEQ  
BG Robert Crear, U.S. Army Corps of Engineers  
Charles Chisolm, Executive Director, MDEQ

## APPENDIX C4

### "No Action Assurance" Letter, Nakayama to McDaniel, February 24, 2006



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 24 2006

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.  
Secretary  
Louisiana Department of Environmental Quality  
P.O. Box 4301  
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

EPA and Louisiana Department of Environmental Quality (LDEQ) staff have continued to work together to discuss areas where LDEQ may need additional flexibility to address the challenges caused by Hurricanes Katrina and Rita. In a meeting between our respective staffs on February 16 and 17, 2006, LDEQ was clear that the issues of the number of houses requiring demolition, the sheer volume of debris, limited landfill space that can currently accept asbestos contaminated material, and the need to move expeditiously to proceed with demolition activities are still critical factors that need to be addressed. As a result, LDEQ requested at that meeting additional flexibility to facilitate demolition activities. In light of the circumstances outlined by LDEQ, today EPA is exercising its enforcement discretion and granting a No Action Assurance.

As you know, on February 3, 2006, EPA issued a No Action Assurance for the asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, to allow residences that are subject to a government issued demolition order based on the residence being 1) structurally unsound but not necessarily in danger of imminent collapse, or 2) moved off of its foundation, to be treated as though the demolition order is based on a determination that the house is structurally unsound and in danger of imminent collapse. Under section 61.145(a)(3) of the asbestos NESHAP regulation, buildings subject to a government issued demolition order based on a determination that the building is structurally unsound and in danger of imminent collapse are not subject to otherwise applicable requirements for inspection and removal of asbestos prior to demolition. Such structures must nonetheless be demolished, transported and disposed of in accordance with specified requirements that ensure adequate protection from any asbestos the buildings may contain. These requirements include notification, thorough wetting of the building both prior to and during the demolition process, and proper disposal of all the debris as if it contained asbestos. The effect of the February 3 No Action Assurance is to allow residences subject to government issued demolition orders based on the structures being unsound or moved off their foundations to be demolished and disposed of in accordance with the streamlined requirements of section 61.145(a)(3).



Today, EPA is extending the February 3, 2006 No Action Assurance to residences that are subject to government issued demolition orders because they are uninhabitable for other environmental reasons (e.g., from excessive flood damage rendering the home uninhabitable). Under this No Action Assurance, as under the February 3 action, such residences may be treated as though they are subject to government issued demolition orders based on a determination that they are structurally unsound and in danger of imminent collapse and thus subject to section 61.145(a)(3) of the asbestos NESHAP regulation. In other words, LDEQ, the U.S. Army Corps of Engineers, local governments, or persons acting under direction of any of these governmental entities, may apply to such residences the NESHAP requirements governing buildings that are "structurally unsound and in danger of imminent collapse." As noted above, for such buildings the asbestos NESHAP dispenses with prior inspection and removal of asbestos but requires notification and proper handling, transport and disposal. EPA is taking this action because it recognizes the necessity of addressing a number of residences not covered by the earlier No Action Assurance, but in need of expeditious demolition and removal.

Today's No Action Assurance will be in effect until February 3, 2007, and apply only to demolition of those residences in Louisiana that were damaged by Hurricane Katrina or Rita and which are subject to a government issued demolition order. In addition, this No Action Assurance applies only to residences that have four or fewer units being demolished in areas where public access is restricted. The No Action Assurance applies to LDEQ and persons operating at LDEQ's direction, the U.S. Army Corps of Engineers and persons operating at the Corps' direction, and local governments and persons acting under their direction. Today's action does not apply to structures that are being demolished solely because the cost of repair exceeds the cost of replacement. This No Action Assurance does not apply to any other federal requirements that may apply to residential demolition and disposal activities (other than the asbestos NESHAP provisions specifically discussed herein). EPA reserves the right to revoke or modify this No Action Assurance if the Agency believes that such action is necessary to protect public health or the environment.

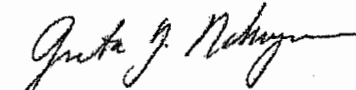
The February 3, 2006 No Action Assurance did not apply to local governments or persons operating at their direction. Today, EPA is amending that No Action Assurance to include local governments and persons operating at their direction because the Agency understands the local governments have been handling a significant portion of the demolition activities directly and they require the same flexibility to proceed expeditiously.

In accordance with section 61.145(a)(3), debris resulting from the demolition of any residence deemed and treated as "structurally unsound and in danger of imminent collapse" under either the February 3, 2006 No Action Assurance or today's No Action Assurance must be handled and disposed of as if it potentially contained asbestos. We understand that LDEQ intends to enhance a number of its existing construction and demolition (C&D) landfills with additional controls to meet or exceed the federal standards under the NESHAP for disposal of these types of waste material that potentially contain asbestos. Because certain types of asbestos (but not all types of asbestos) were banned after 1980, LDEQ intends to send debris from "unsound"

residences built after 1980 to these enhanced landfills. However, since the enhanced C&D landfills, as well as Louisiana's permitted Type I and Type II landfills are required by Louisiana to either meet or exceed federal disposal standards under the NESHAP, EPA will defer to the State to set disposal location priorities.

EPA is committed to continue to work with LDEQ in addressing the very difficult circumstances caused by Hurricanes Katrina and Rita. For example, our staffs are revisiting the use of Air Curtain Destructors and grinders as means of debris volume reduction to further assist in addressing the lack of adequate landfill space. I am hopeful these activities will be able to move forward, perhaps providing relief in both the immediate situation and future times of need. If you have any questions, please give me a call at 202-564-2440, or have your staff call Randy Hill of my staff at 202-564-2220 or John Blevins of EPA Region 6 at 214-665-2210.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator

cc: Richard Greene, Regional Administrator, Region 6  
J.I. Palmer, Jr., Regional Administrator, Region 4  
Dr. Harold Leggett, LDEQ  
Dr. Chuck Carr Brown, LDEQ  
Cheryl Nolan, LDEQ  
BG Robert Crear, U.S. Army Corps of Engineers  
Charles Chisolm, Executive Director, MDEQ

## Appendix C5

### LDEQ Protocol to Comply with the LESHAP Regulations 05/10/2006

#### Background

On August 29, 2005, Hurricane Katrina struck southeast Louisiana as a strong Category 4 Hurricane, on a north heading at 15 mph, with maximum sustained winds of approximately 143 mph with gusts up to 165 mph<sup>3</sup>. The storm brought with it a storm surge of 20-30 feet. Although Katrina weakened before landfall, the Category 4 hurricane's fierce winds and near-record storm surge were still able to cause widespread destruction and loss of life.<sup>4</sup> In Southeast Louisiana, the Parishes of Orleans, St. Bernard and Plaquemines were flooded by the excessive rain and a storm surge of 20-30 ft, overtopping levees, and ultimately causing the breach of certain levees that separate New Orleans from surrounding lakes.<sup>5</sup> Along the shore of Lake Pontchartrain, severe storm surge damage was experienced along the lake shore from Mandeville to Slidell with storm surge water moving north into Slidell, up to 6 ft deep in some locations.<sup>6</sup> At least 80% of New Orleans was under flood water on August 31st, largely as a result of levee failures from Lake Pontchartrain. The combination of strong winds, heavy rainfall and storm surge led to breaks in the earthen levees after the storm passed, leaving some parts of New Orleans under 20 feet of water.<sup>7</sup>

Subsequent flooding occurred in Orleans, Plaquemines, and St. Bernard parishes as a result of rain and storm surges as Hurricane Rita moved through the Gulf of Mexico to strike southwest Louisiana and southeast Texas on September 24, 2005.<sup>8</sup>

Based on the US Census data from 2000, there are a total of 440,269 homes in Orleans, Jefferson, St. Bernard and Plaquemines Parishes. Of these homes, an estimated 360,398 were constructed prior to 1980.<sup>9</sup>

The purpose of this protocol is to provide guidance for compliance with the standards for the demolition and renovation activity pursuant to the Louisiana Emission Standard for Hazardous Air Pollutants (LESHAP) for asbestos (LAC 33:III.Chapter 51.Subchapter M). Subchapter M has been deemed to be at least as stringent as the federal regulation and the Louisiana Department of Environmental Quality has received delegation of the NESHAP program from the US EPA. The LDEQ has used EPA guidance to provide this assistance in the determination of compliance with Chapter 51

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<sup>3</sup> See <http://www.srh.noaa.gov/hgx/gifs/Katrina.jpg>.

<sup>4</sup> See [http://www.srh.noaa.gov/lix/Katrina\\_overview.html](http://www.srh.noaa.gov/lix/Katrina_overview.html)

<sup>5</sup> See [http://www.srh.noaa.gov/lix/html/psh\\_katrina.htm](http://www.srh.noaa.gov/lix/html/psh_katrina.htm)

<sup>6</sup> See [http://www.srh.noaa.gov/lix/html/psh\\_katrina.htm](http://www.srh.noaa.gov/lix/html/psh_katrina.htm)

<sup>7</sup> See <http://lwf.ncdc.noaa.gov/oa/climate/research/2005/katrina.html#impacts>

<sup>8</sup> See [http://www.srh.noaa.gov/lix/html/psh\\_rita.htm](http://www.srh.noaa.gov/lix/html/psh_rita.htm)

<sup>9</sup> See data from US Census website, "Profile of Selected Housing Characteristics: 2000" for Geographic Area of Orleans Parish, Jefferson Parish, St. Bernard Parish and Plaquemines Parish and accompanying summary sheet.

(and through delegation, the NESHP). The LDEQ has also received letters from EPA providing targeted flexibility regarding compliance with certain aspects of the NESHP. Attached to this protocol is a matrix developed by EPA dated February 24, 2006, that summarizes the LESHAP and NESHP requirements and the flexibility afforded by EPA.

#### **A. Structures demolished by the Hurricanes and Debris on the ground**

If a house or structure has been effectively demolished by the hurricane, collection, treatment and disposal of the debris is not covered by LAC 33:III.5151.F. Additionally, this debris is not subject to the asbestos LESHAP, in accordance with EPA guidance.<sup>10</sup>

#### **B. General guidelines for demolition and related activities**

1. Best Management Practices – Conduct all asbestos demolition, grinding of non asbestos-containing material, transportation, and disposal activities using best management practices and engineering controls to control emissions. These include, but are not limited to wetting structures/materials before, during and after demolition or grinding, controlled collapse of walls, and taking all reasonable steps to avoid running over asbestos containing material with heavy equipment.
2. Site Security – For all demolition, grinding and disposal sites handling asbestos containing material establish and implement procedures to restrict public access.
3. Air Monitoring – Conduct air monitoring for the presence of asbestos fibers at enhanced construction and demolition debris landfills and grinding facilities.

#### **C. Structures that remain standing after the Hurricanes**

1. Demolition/Renovation conducted by homeowner or homeowner's contractor

Renovation or Demolition by the individual homeowner of residential buildings with four or fewer dwelling units is not covered by the asbestos LESHAP<sup>11</sup>. Additionally, the resultant debris is not subject to the asbestos LESHAP.

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<sup>10</sup> Letter dated November 9, 2005, EPA (Coleman) to US Army Corps of Engineers (Smithers), which states: "If a building or other structure was totally destroyed by a hurricane, then the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M (Asbestos NESHP) does not apply to any subsequent activities. For such destroyed structures, you may immediately begin removal and proper disposal of the resulting debris."

<sup>11</sup> NESHP Clarification of Intent, Federal Register, July 28, 1995, Volume 60, Number 145, pages 38725-38726 which states: "EPA believes that individual small residential buildings that are demolished or renovated are not covered by the asbestos NESHP. This is true whether the demolition or renovation is performed by agents of the owner of the property or whether the demolition or renovation is performed by agents of the municipality. EPA believes that the residential building exemption applies equally to an individual small residential building regardless of whether municipality is the "owner or operator" for the purposes of demolition or renovation."

## **2. Demolition of residential structures conducted as a result of a government order**

The EPA has indicated that multiple buildings being demolished as a result of the hurricane in accordance with a government order are considered an "installation" as defined in the asbestos LESHAP<sup>12, 13, 14</sup>. Assuming the demolition of multiple residential buildings with four dwelling units or less by a single entity are covered by the asbestos LESHAP, the department will consider compliance with this protocol as compliance with the asbestos LESHAP. It will be the responsibility of the local government or its contractors to determine the boundaries of the installation site. EPA's guidance with respect to "site" states that the site should be a "relatively compact area", but "the local government should use common sense when applying this guide."<sup>15</sup> EPA also states that "EPA believes that if a demolition project involves the demolition of several contiguous city blocks, the entire area could be considered a site."<sup>16</sup>

Notification of demolition and wetting requirements apply in all instances of demolition using the AAC-2 form. The AAC-2 form may be located on the Department's Asbestos and Lead web page at <http://www.deq.louisiana.gov/portal/Default.aspx?tabid=2251>.

### **a. Facilities that are structurally unsound or uninhabitable**

It is the responsibility of local governments and their contractors to determine which houses should be demolished because they are unsound or otherwise uninhabitable, and to prepare a list of the houses to be demolished. In No Action Assurance letters dated February 3, 2006, and February 24, 2006, EPA provides for flexibility for houses that are determined to be unsound or otherwise uninhabitable. Local governments and their contractors should be aware of this flexibility when making determinations. The following structures are the subject of EPA's No Action Assurance letters:

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<sup>12</sup> NESHAP Clarification of Intent, Federal Register, July 28, 1995, Volume 60, Number 145, pages 38725-38726 which states: "However, EPA believes that the residential building exemption does not apply where multiple (more than one) small residential buildings on the same site are demolished or renovated by the same owner or operator as part of the same project or where a single residential building is demolished or renovated as part of a larger project that includes demolition or renovation of non-residential buildings." The notice further states: "EPA does not believe the residential building exemption was designed to exempt larger demolitions or renovations on a particular site, even where smaller residential buildings are involved."

<sup>13</sup> EPA has also issued subsequent Applicability Determinations which support this position. See Determination Detail, Control #A960033, dated 11/01/1995 and Control #A970008, dated 09/04/1997.

<sup>14</sup> Letter dated November 9, 2005, EPA (Coleman) to US Army Corps of Engineers (Smithers), which states: "Please note that demolition and disposal of "partially-damaged" or "standing-but-unsafe-to enter" structures are subject to Asbestos NESHAP requirements."

<sup>15</sup> NESHAP Clarification of Intent, Federal Register, July 28, 1995, Volume 60, Number 145, pages 38725-38726.

<sup>16</sup> Ibid.

- Residences that are subject to a government issued demolition order based on the residence being structurally unsound but not necessarily in danger of imminent collapse,
- Residences that are subject to a government issued demolition order because the structure has been moved off of its foundation, and
- Residences that are subject to government issued demolition orders because they are uninhabitable for other environmental reasons (e.g., from excessive flood damage rendering the home uninhabitable).

These residences may be treated as though the demolition order is based on a determination that the house is structurally unsound and in danger of imminent collapse. As a result, these residences may be demolished in accordance with more streamlined demolition requirements

Since no inspections are performed, the entire waste stream must be disposed of in a permitted Type I or II landfill or other LDEQ approved landfill that meets federal NESHAP disposal standards (such as an enhanced C & D landfill which are required to have additional controls to meet or exceed the federal standards under NESHAP (see 40 CFR § 61.154).).

#### **b. Structurally Sound Homes**

For the installations consisting of sound residential structures, the LDEQ requires a thorough inspection of such residential structures by an asbestos inspector accredited by the LDEQ. See attached "LDEQ Inspection Protocol for "thorough inspections," which is considered compliant with LESHAP.

### **D. Thorough Asbestos Inspections**

Thorough asbestos inspections must be conducted by asbestos inspectors accredited by LDEQ. The LDEQ Inspection Protocol for "thorough inspections", which is considered compliant with LESHAP, must be followed when conducting a "thorough inspection" for the purposes of compliance with LESHAP.

### **E. Disposal of Waste Streams resulting from inspections and demolition activities**

- Debris from residences that are being treated as structurally unsound and in danger of imminent collapse must be disposed of in LDEQ permitted Type I or II landfills authorized to accept asbestos or other LDEQ approved landfill that meets federal NESHAP disposal standards (such as an enhanced C & D landfill).

- Non-friable Category I and II ACM (Non-RACM) may be disposed of at designated areas within permitted Type III landfills that are LDEQ approved for Non-friable Category I and II disposition.
- RACM that has been removed from residences for which a thorough inspection has been conducted must be disposed of in permitted Type I or II landfills authorized to accept asbestos.
- C&D waste may be disposed of at LDEQ approved Construction and Debris waste sites.

## **F. Handling of Debris and Waste Materials from Demolition Activity**

1. For installations where residences are being thoroughly inspected prior to demolition and RACM is identified, or where residences are being treated as structurally unsound and in danger of imminent collapse, appropriate procedures for asbestos emission control provided by LAC 33:III.5151.F.3 shall be employed. The wet method (fogging/misting) should be used prior to demolition, during demolition, and during loading of the material. Mist the houses, including asbestos-containing roofing shingles and siding, remove, segregate, and transport in an appropriate manner to a permitted asbestos Type I or II landfill, enhanced C&D landfill or regular C&D landfill as appropriate. The removal and segregation of material suspected to contain asbestos, including asbestos containing roofing and siding is recommended.
2. Each structure should be knocked down in a controlled manner to minimize excess breakage of asbestos containing material. Debris should be wetted during demolition, interim staging, and loading activities.
3. It may not be necessary that Category I asbestos containing material (vinyl tile, mastic, etc.) be removed and segregated from the construction and debris waste if it does not have a high probability of becoming friable. If this material does not become friable by the forces expected to act on the material in the course of demolition, it may be disposed at a designated area in an approved C&D disposal site. Regarding Category I asbestos containing material, follow the LDEQ Inspection Protocol for "thorough inspections."
4. Removal of RACM from Inside Sound Structures

For structurally sound structures, shut windows and doors. If they cannot be shut, install critical barriers (e.g. polyethylene sheeting). However, sufficient wetting is required to manage emissions during removal.

- a. Negative air is not required;
- b. The wet method must be employed to remove the regulated ACM;
- c. Regulated ACM waste must be bagged and labeled;

- d. Bulk material left behind must be visually inspected and cleaned appropriately;
- e. No air monitoring clearance is necessary;
- f. Walls, ceilings, floors, etc. must be encapsulated to ensure ACM fibers are not being released during demolition and loading;
- g. Follow demolition procedures as noted in this Guidance, and use OSHA worker protection guidelines.

## **Summary**

The Department has determined that compliance with the above procedures is compliant with LESHAP requirements. Entities conducting activities in accordance with this document will be considered in compliance with LESHAP requirements.



APPENDIX C6

Letter, Blevins to Leggett, March 1, 2006



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202-2733

March 1, 2006

Harold Leggett, Ph.D.  
Assistant Secretary  
Office of Environmental Compliance  
Louisiana Department of Environmental Quality (LDEQ)  
P.O. Box 4312  
Baton Rouge, LA 70821-4312

Dear Dr. Leggett:

Thank you for the opportunity to review various drafts of the "LDEQ Protocol to Comply with the LESHAP Regulations (LESHAP Protocol)." I appreciate your willingness to incorporate EPA's comments into the latest draft (attachment to 1:35 pm email from Cheryl Nolan on March 1, 2006) of the LESHAP Protocol. EPA has reviewed this version of the Protocol and finds it to be consistent with the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos or allowed under EPA's No Action Assurance letters to LDEQ of February 3, 2006 and February 24, 2006.

I understand that LDEQ is planning to finalize the LESHAP Protocol today for distribution to various Federal, State, and local governmental agencies, as well as contractors, to aid in the demolition of hurricane-impacted residences. EPA supports the finalization and widespread distribution of the LESHAP Protocol.

I also personally appreciate LDEQ's efforts in preparing the LESHAP Protocol and your willingness to work with us on our comments. If EPA can be of further assistance in relation to this effort, please let me know.

Sincerely yours,

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

cc: Lee Champagne, FEMA  
Colonel Pearson, USCOE  
Timothy Gouger, USCOE  
Randy Hill, EPA HQ  
Larry Starfield, EPA  
David Gray, EPA  
Sam Coleman, EPA  
David Garcia, EPA

## **APPENDIX C7**

### **LDEQ Inspection Protocol to comply with the term "thorough inspection"**

An LDEQ accredited asbestos inspector performs an inspection whereby all suspect Asbestos Containing Material (ACM) is sampled and samples are analyzed by an LDEQ accredited laboratory, utilizing Polarized Light Microscopy (PLM):

This includes but is not limited to:

- 1- Friable material such as walls, ceilings, insulating materials, floor coverings, fire proofing, window caulking, etc;
- 2- Category I nonfriable ACM that has become friable;
- 3- Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, in accordance with 40 CFR Subpart M-National Emission Standard for Asbestos, 61.141. Definitions; and
- 4- Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

Category II material such as cement asbestos containing roofing shingles and siding are to be assumed ACM.

The number of samples taken shall be in accordance with the Asbestos Hazard Emergency Response Act (AHERA). Where feasible, AHERA should be employed with the exception of a partial inspection.

An inspector may make a determination that Category I material such as resilient floor covering, caulking, etc. is in good condition by administering hand pressure. If the material is not friable and in good condition, it is not necessary to sample the material because it is Category 1 in good condition that does not have a high probability of becoming regulated ACM, and is therefore considered to be non regulated.

#### **Partial Inspection**

Where a "thorough inspection" can be conducted on the majority of the structure, including sampling of suspect ACM if any is present, that procedure will be completed to the extent possible. If suspect RACM is present and verified by sampling to be RACM, the structure will be demolished and disposed as RACM. In the case where the partial inspection reveals either no suspect RACM or sampling demonstrates that no RACM is present, that part of the structure will be demolished as C&D debris.

After the unstable/inaccessible portions of the structure are made safe and accessible, the accredited asbestos inspector will verify that the materials in that part of the structure are homogeneous with the materials that were inspected during the partial inspection. If determined to be homogeneous and no other RACM is identified, the remainder of the structure will be determined to be C&D debris. However, if the

inspector determines that the materials in the unstable/inaccessible portion of the structure are not homogeneous or that RACM is present, the unstable/inaccessible portion of the structure will be demolished and disposed as RACM.

# Louisiana Katrina/Rita NESHAP Matrix

(residential structures of 4 units or less- no condos, apartments or commercial buildings)

Revised 5/25/06

TYPE OF STRUCTURE	ACTIVITY	NESHAP	FLEXIBILITY WITH NAA LTR
UN SOUND STRUCTURE (structure subject to a governmental demolition order for which a thorough inspection is not possible)	inspection	Thorough inspection not required (due to structure being structurally unsound and in imminent danger of collapse). Structure is subject to a governmental demolition order.	1. Unsound structure definition expanded to include homes that are structurally unsound or moved off their foundation but not necessarily in danger of imminent collapse. (2/3/06-2/3/07)  2. Government issued demolition orders for groups of covered residences (e.g. a block, sub-division, or other appropriate geographic area) the same as an order based on individual determination. (2/3/06-2/3/07)  3. Unsound structures definition expanded to include homes that are uninhabitable for other environmental reasons. (2/24/06-2/24/07)
	pre-demolition	RACM removal not possible due to condition of structure  Note: Exterior RACM may be removed (by certified contractor) if no visible emissions are generated, but <b>all waste</b> (both removed RACM and all other material from the remaining standing structure) must be disposed of in a NESHAP compliant landfill	N/A

\* This is a general summary of the asbestos NESHAP requirements. The matrix does not include administrative requirements related to compliance with the asbestos NESHAPs (such as notification requirements). In order to determine the precise asbestos NESHAP requirements and EPA's No Action Assurance requirements that might apply in any given situation, please refer to the asbestos NESHAP regulations at 40 CFR Part 61, Subpart M and the specific No Action Assurance letters.

	demolition	<ol style="list-style-type: none"> <li>1. Must be wetted throughout demolition process (i.e. prior to and during the demolition process) to eliminate visible emissions.</li> <li>2. Asbestos trained manager/supervisor must be present</li> </ol>	N/A
	transportation	Manage waste streams as RACM (wet and covered trucks)	N/A
	disposal	<ol style="list-style-type: none"> <li>1. State asbestos permitted landfill, or</li> <li>2. NESHAP compliant C&amp;D landfill</li> </ol>	<ol style="list-style-type: none"> <li>1. Disposal of asbestos containing material in Enhanced C&amp;D Landfills that are NESHAP compliant for post 1980 and all unsound residential structures per LDEQ determination. (2/24/06-2/24/07)</li> </ol>
	inspection	<ol style="list-style-type: none"> <li>1. Certified Inspectors required</li> <li>2. Thorough inspection required of each structure (Attachment 1)</li> <li>3. Structure is subject to a governmental demolition order.</li> </ol>	N/A
<b>SOUND STRUCTURE</b> (structure subject to governmental demolition order thoroughly inspected)	pre-demolition	<b>RACM removal</b> <ol style="list-style-type: none"> <li>1. Certified contractor required</li> <li>2. Adequately wet prior to removal to eliminate visible emissions.</li> <li>3. Handle material in a way to prevent damage.</li> </ol>	N/A
	demolition	Once RACM removed, no additional requirements- only C&D remaining (handle according to State/local requirements)	N/A
	transportation	1. RACM waste- place in leak-proof	N/A

\* This is a general summary of the asbestos NESHAP requirements. The matrix does not include administrative requirements related to compliance with the asbestos NESHAPs (such as notification requirements). In order to determine the precise asbestos NESHAP requirements and EPA's No Action Assurance requirements that might apply in any given situation, please refer to the asbestos NESHAP regulations at 40 CFR Part 61, Subpart M and the specific No Action Assurance letters.

		containers, wet, covered truck 2. C&D- no requirements (handle according to State/local requirements)	
	disposal	1. RACM waste- State asbestos permitted landfill 2. C&D waste- No requirements (handle according to State/local requirements)	N/A

## Attachment

\* This is a general summary of the asbestos NESHAP requirements. The matrix does not include administrative requirements related to compliance with the asbestos NESHAPs (such as notification requirements). In order to determine the precise asbestos NESHAP requirements and EPA's No Action Assurance requirements that might apply in any given situation, please refer to the asbestos NESHAP regulations at 40 CFR Part 61, Subpart M and the specific No Action Assurance letters.

**"No Action Assurance" Letter, Nakayama to McDaniel, February 2, 2007**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 2 2007

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.  
Secretary  
Louisiana Department of Environmental Quality  
P.O. Box 4301  
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

Thank you for your December 21, 2006 letter in which the Louisiana Department of Environmental Quality (LDEQ) requested that the United States Environmental Protection Agency (EPA) extend the February 3 and 24, 2006 No Action Assurances (NAAs) (Attachments 1 and 2) through September 30, 2007. These NAAs, which currently are set to expire on February 3, 2007, provide flexibility for certain provisions of the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, for demolition activities necessitated by Hurricanes Katrina and Rita.

In your letter, you note that, although much has been accomplished, there are still approximately 25,000 homes requiring demolition and that the NAAs provide needed flexibility to efficiently continue the demolition mission, while ensuring protection of public health and the environment. In light of the circumstances outlined by LDEQ in recent conversations between our staffs, and in a letter from Assistant Secretary Harold Leggett, received by EPA on January 29, 2007, most notably the significant volume of remaining homes that require expeditious demolition, today EPA is exercising its enforcement discretion and extending the February 3 and 24, 2006 NAAs through September 30, 2007. Because of the significant progress made in a number of parishes as noted in Dr. Leggett's letter, we are limiting the applicability of the NAAs extended in this letter to cover demolition activities in the following parishes, which are covered under Louisiana Emergency Declarations and Administrative Orders: Iberville, Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. Tammany, Washington, Calcasieu, Cameron, and Vermilion.

Both LDEQ and Region 6 have done a tremendous job of overseeing the demolition activities under the February 3 and 24, 2006 NAAs and should be commended. Such oversight activities are critical to ensuring protection of public health and the environment and these ongoing efforts must continue (as described more fully below) under the extension granted

today. Furthermore, as LDEQ has described to EPA, the USACE and its contractors have conducted extensive sampling which indicate little or no asbestos emissions. Additionally, no measurable amounts of asbestos were found in any of the air samples taken by EPA at monitoring sites around the greater New Orleans area.

#### NAA Oversight

Under the February 3 and 24, 2006 NAAs, LDEQ and EPA trained approximately 120 inspectors to perform demolition oversight activities and those inspectors subsequently oversaw over 3,200 demolitions. LDEQ is committed to providing the necessary resources to perform the demolition oversight needed to restore the State of Louisiana. As a result of these oversight activities, LDEQ initiated 11 enforcement actions. Both LDEQ and EPA will continue to follow up on these actions and any additional instances of possible noncompliance with the February 3 and 24, 2006 NAAs and the asbestos NESHAP and Louisiana Emission Standards for Hazardous Air Pollutants with the appropriate enforcement action. For the duration of this NAA extension, LDEQ will continue to commit the resources necessary for demolition oversight as utilized in 2006. In turn, EPA Region 6 will continue to support LDEQ field activity based on the funding approved by FEMA under the existing Interagency Agreement (based on the Action Request Form received from LDEQ), which is available through September 30, 2007.

In addition to these oversight activities, EPA Region 6's Compliance Assurance and Enforcement Division (CAED) will conduct several on-site visits at demolition sites with LDEQ to jointly verify compliance. The on-site visits will be conducted on a monthly basis for the first three months starting in March 2007. These on-site visits will occur quarterly thereafter (i.e., once every three months thereafter). Through these on-site visits, CAED will observe the demolition practices and procedures being utilized in order to ensure compliance with the asbestos NESHAP requirements and the NAAs EPA is extending today. CAED also will review any field reports generated from inspection activities.

EPA Region 6 and LDEQ will continue to meet on a regular basis to discuss demolition activities covered under today's NAA extension. Such meetings will continue to include discussions of EPA's observations and oversight activities in addition to available monitoring data. These meetings will continue to include staff discussions regarding technical issues related to demolition activities. EPA Region 6 and LDEQ will continue to use quarterly managerial meetings to allow concerns to be identified and addressed.

#### Recommendations

As noted in the NAAs that are being extended by this letter, the work practice standards under the asbestos NESHAP continue to apply to demolitions covered by the NAAs, including ensuring adequate wetting of the material from before the demolition process through disposal. In addition, while not specifically required, EPA continues to recommend thoroughly wetting the interior to the extent possible through windows and door openings and/or through openings made into the attic spaces and/or walls from the exterior prior to demolition. Where field conditions allow, EPA also recommends that amended water be used for wetting, as this



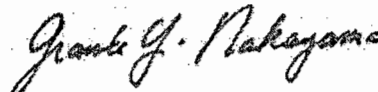
significantly reduces the potential for asbestos release. The surfactant added to the water provides better wetting than regular water and helps ensure that the "no visible emissions" standard is met.<sup>1</sup> For further information on the use of amended water, please contact Region 6.

#### Limitations

Today's NAA extension applies only to the those persons and activities identified in the February 3 and 24, 2006 NAAs and then only to the extent such persons are operating and such activities are taking place in the following parishes, which are covered under Louisiana Emergency Declarations and Administrative Orders: Iberville, Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. Tammany, Washington, Calcasieu, Cameron, and Vermilion. In addition, as is the case with the February 3 and 24, 2006 NAAs that are being extended in this letter, this NAA extension does not apply to any other federal requirements that may apply to residential demolition and disposal activities (other than the asbestos NESHAP provisions specifically discussed in the February 3 and 24, 2006 NAAs and herein). This extension is conditioned on continuation of the oversight activities described above, as well as all the other conditions specified in the February 3 and 24, 2006 NAAs. EPA continues to reserve the right to revoke or modify the NAAs that are extended by way of this letter, as well as the extension itself, if the Agency believes that such action is necessary to protect public health and/or the environment.

Through this extension of the February 3 and 24, 2006 NAAs, EPA is continuing its commitment to work with LDEQ in addressing the very difficult circumstances caused by Hurricanes Katrina and Rita. If you have any questions, please give me a call at 202-564-2440, or have your staff call Randy Hill of my staff at 202-564-2220 or John Blevins of EPA Region 6 at 214-665-2210.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator

#### Enclosures

cc: Richard Greene, Regional Administrator, Region 6  
J.I. Palmer, Jr., Regional Administrator, Region 4  
Dr. Harold Leggett, LDEQ  
Dr. Chuck Carr Brown, LDEQ  
Cheryl Nolan, LDEQ  
BG Robert Crear, U.S. Army Corps of Engineers  
Trudy Fisher, Executive Director, MDEQ

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<sup>1</sup>An example of how to use a wetting agent can be found in EPA's "Guidance for Controlling Asbestos-Containing Materials in Buildings" EPA-560/5-85-024 (Purple Book).

**"No Action Assurance" Letter, Nakayama to McDaniel, September 28, 2007**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 28 2007

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.  
Secretary  
Louisiana Department of Environmental Quality  
P.O. Box 4301  
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

We are in receipt of Assistant Secretary Harold Leggett's letter of July 26, 2007, in which he requests on behalf of the Louisiana Department of Environmental Quality (LDEQ) that the United States Environmental Protection Agency (EPA) extend the February 3 and 24, 2006, and February 2, 2007 No Action Assurance letters (hereinafter collectively referred to as the NAAs) (Enclosure 1) through June 30, 2008. These NAAs, which currently are due to expire on September 30, 2007, provide flexibility for certain provisions of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, for demolition activities necessitated by Hurricanes Katrina and Rita.

In Dr. Leggett's letter, he notes that, although much has been accomplished, the Federal Emergency Management Agency (FEMA) estimates that there are still approximately 15,000 homes requiring demolition. The letter goes on to assert that the flexibility afforded by the NAAs has allowed the demolition mission to proceed in about half the time and at about half the cost per demolition than otherwise would be the case under the asbestos NESHAP, while still ensuring protection of public health and the environment. The letter further acknowledges that demolitions have been delayed for a number of reasons, including local laws on condemnation, decisions by local governing bodies, and the lack of clear title to many residences.

EPA recognizes the tremendous challenge to demolish the extraordinary number of homes damaged by the hurricanes and we are committed to work with LDEQ to find a reasonable path forward to address these challenges and ensure protection of public health and the environment. Monitoring data for the current practices have not raised any concerns.

The flexibility provided under the NAAs has always been conditioned upon increased oversight activities by EPA Region 6. FEMA, through an Interagency Agreement (IAA) with Region 6, provided funding for many of the Region 6 oversight

activities. However, EPA understands that FEMA will be extending the IAA with Region 6 only through December 31, 2007. (See Enclosure 2, August 30, 2007 Letter from Jim Stark, Director, Louisiana Transitional Recovery Office to Colonel Thomas Kirkpatrick, State Coordinating Officer, State of Louisiana). In light of both FEMA's decision and the information provided by LDEQ, today EPA is exercising its enforcement discretion and extending the NAAs through December 31, 2007.

#### NAA Oversight

Both LDEQ and Region 6 have done an outstanding job of overseeing the demolition activities under the NAAs and should be commended. Such oversight activities are critical to ensuring protection of public health and the environment and these ongoing efforts must continue under the extension granted today. Accordingly, for the duration of this NAA extension, LDEQ is required to continue to commit at least the same level of resources necessary for demolition oversight as utilized under the prior NAAs. In turn, EPA Region 6 will continue to support LDEQ field activity to at least the same level as it had under the prior NAAs. Both LDEQ and EPA agree to continue to follow up on any instances of possible noncompliance with the NAAs, the asbestos NESHAP, and the Louisiana Emissions Standards for Hazardous Air Pollutants, where appropriate, with enforcement action.

We understand that the United States Army Corps of Engineers (USACE) is phasing out its activities and will not be conducting any demolitions after September 30, 2007. The USACE has been instrumental in providing monitoring data from their contractors, both worker monitoring required under the Occupational Safety and Health Administration (OSHA) program and demolition site perimeter monitoring. Since this monitoring will no longer be available through the USACE, we are establishing new requirements to ensure this important information continues to be provided to LDEQ for review and consideration as part of their ongoing oversight efforts. If the number of contractors performing demolition work under today's NAA extension reaches ten or more, LDEQ must contact EPA so that EPA can reconsider the approach used in obtaining the monitoring data.

#### Limitations

Today's NAA extension applies only to those persons and activities identified in the February 3 and 24, 2006 and February 2, 2007 NAAs with the following additional restrictions and/or conditions:

1. After September 30, 2007, the NAA does not apply to the USACE or its contractors since the USACE no longer will be performing residential demolition activities in Louisiana after that date.
2. The NAA applies only to the extent that identified persons are operating and such activities are taking place in the following parishes, which are covered under the State of Louisiana, Department of Environmental Quality, Eleventh Amended Declaration and

Administrative Order, dated July 13, 2007: Orleans, Plaquemines, St. Tammany, St. Bernard and Jefferson.

3. Today's NAA extension will only apply to those identified persons doing demolition activities in the parishes covered by this extension, provided they notify LDEQ in writing that they wish to be subject to the NAA in advance of such demolition activities. Such notice is only required once. With respect to such persons, those responsible for maintaining copies of employee asbestos exposure monitoring information as required by OSHA must provide copies of such information to LDEQ. The employee exposure monitoring information includes the Initial Exposure Assessment (both 8 hour TWA and 30 minute short term exposure), Periodic Monitoring (daily results within Class II work), and the final test results that allow the employer to terminate monitoring pursuant to OSHA requirements, if applicable. If, for some reason, permissible exposure limit (PEL) and excursion limit monitoring are no longer required under OSHA, the persons who would have been responsible for maintaining copies of the monitoring information must notify LDEQ that monitoring has ceased.

Persons responsible for maintaining copies of employee exposure monitoring data must submit any such data to LDEQ by the first and fifteenth of the month after they receive the monitoring results. If monitoring is not required under OSHA, notification is still necessary and must be provided to LDEQ prior to the beginning of demolition activities. This condition is not intended in any way to affect or modify any existing OSHA requirements. LDEQ will review the employee exposure data to determine if there are conditions developing that may have a negative impact on human health or the environment.

We understand that perimeter monitoring is being performed at the majority of demolition sites. This data must also be submitted to LDEQ and reviewed as part of its oversight activities. The monitoring data and any issues regarding exposure will be discussed with EPA Region 6 during the monthly LDEQ/EPA Region 6 oversight calls, or sooner if the data indicate a potential negative impact on human health or the environment.

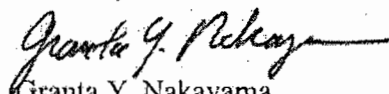
4. In addition, as is the case with the NAAs that are being extended by this letter, this NAA extension does not apply to any other federal requirements that may apply to residential demolition and disposal activities (other than the asbestos NESHAP provisions specifically discussed in the February 3 and 24, 2006 and February 2, 2007 NAAs and herein).

This extension is conditioned on the oversight activities described above, as well as all the other conditions specified in the February 3 and 24, 2006 and February 2, 2007 NAAs. LDEQ must immediately notify EPA Region 6 if it becomes aware of any information that indicates it is not advisable to continue to allow the flexibility provided in today's NAA extension. EPA continues to reserve the right to revoke or modify the NAAs that are extended by way of this letter, as well as the extension itself, if the

Agency believes that such action is necessary to protect public health and the environment.

Through today's extension of the prior NAAs, EPA is continuing its commitment to work with LDEQ in addressing the very difficult circumstances caused by Hurricanes Katrina and Rita. If you have any questions, please give me a call at 202-564-2440, or have your staff call Randy Hill of my staff at 202-564-2220 or John Blevins of EPA Region 6 at 214-665-2210.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator

Enclosures

Cc: Richard Greene, Regional Administrator, Region 6  
Dr. Harold Leggett, LDEQ  
Dr. Chuck Carr Brown, LDEQ  
Cheryl Nolan, LDEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 3 2006

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.  
Secretary  
Louisiana Department of Environmental Quality  
P. O. Box 4301  
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

This letter is in response to a January 24, 2006 electronic mail message from Cheryl Nolan of your staff transmitting a draft Protocol from the Louisiana Department of Environmental Quality (LDEQ) developed to provide guidance on compliance with applicable asbestos standards during the demolition of houses and disposal of resulting debris in response to Hurricane Katrina and Hurricane Rita. Staff from EPA Headquarters and EPA Region 6 have had a number of conversations with LDEQ staff in the past week, and EPA understands that LDEQ wishes to explore potential flexibility to facilitate the parts of the Protocol that contemplate 1) the grinding of debris containing potentially regulated asbestos containing material to reduce its volume and 2) treating certain homes (e.g., those built after 1980) as not containing regulated asbestos. The purpose of this letter is to explain how EPA would like to proceed to resolve these issues and to provide some interim flexibility with respect to federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements that will allow additional demolition to go forward as we continue to work on these issues.

During recent phone calls with EPA regional and headquarters staff, LDEQ identified several issues that are adversely affecting the speed of demolition and debris disposal and which it seeks to address in its Protocol. These issues include limited landfill space that can accept asbestos contaminated material, the sheer volume of debris which must be transported and placed in the landfills, and the number of houses that must be demolished and which are subject to the Clean Air Act NESHAP asbestos inspection requirements and/or the emission control and disposal requirements.

EPA recognizes the tremendous challenge to demolish homes severely damaged by the hurricanes and dispose of the huge amounts of debris as expeditiously as possible. On my recent visit to the New Orleans area, which members of LDEQ staff and management graciously hosted, I saw the actual level of Hurricane Katrina's devastation, and it brought home the need to work closely with Louisiana to explore options that will provide a reasonable path forward on demolition and disposal activities that will also be protective of the public and the environment. EPA appreciates that LDEQ has already agreed in the past week to several modifications to the approach laid out in the draft Protocol to address the Agency's concerns regarding the consistency of the Protocol with federal and state requirements. EPA is committed to continuing to work closely with LDEQ to try to resolve the "grinding" issue expeditiously and discuss the "post-1980" and other debris management issues soon after that.

As EPA staff has discussed with LDEQ staff over the past week, EPA needs to receive and evaluate additional information to make decisions as to whether to grant a No Action Assurance for these

options. LDEQ has agreed to provide additional information on landfill capacity and data on grinding activities, e.g., air monitoring data from sites where grinding debris from completely destroyed areas (on the ground debris) has taken place. EPA applauds the efforts that LDEQ and the U.S. Army Corps of Engineers have made to develop such data and will expedite its review and evaluation of the data, in consultation with LDEQ, once the Agency receives the information.

As EPA and LDEQ work to address grinding and other issues, we understand from Region 6 that LDEQ has requested flexibility to expedite the demolition of certain structures. The first part of LDEQ's request is to allow certain residences subject to a government demolition order to be treated as though they have been determined to be structurally unsound and in danger of imminent collapse. The asbestos NESHAP exempts structures being demolished under a government demolition order, issued because the structure is unsound and in danger of imminent collapse, from the 10 day notification requirement and from the requirement to inspect and remove asbestos provided specific emission control procedures (e.g., trained supervisor, asbestos NESHAP demolition work practices) are followed. See 40 CFR § 61.145(a)(3). The NESHAP transport and disposal requirements also apply to the debris from these demolitions.

In light of the widespread destruction from the hurricanes, EPA understands that demolition orders may be issued for a variety of reasons. Such circumstances include houses found to be structurally unsound and in danger of imminent collapse, houses found to be structurally unsound, houses moved off their foundations (but which may not have been inspected by a structural engineer), houses found to be uninhabitable (but structurally sound), or houses facing repair costs higher than the structure's replacement cost. Such decisions are and remain the responsibility of state or local governments.

Given the unprecedented situation faced by the State, EPA is granting a No Action Assurance for the asbestos NESHAP, 40 CFR Part 61, Subpart M, to allow residences that are subject to a government issued demolition order based on the residence being 1) structurally unsound but not necessarily in danger of imminent collapse, or 2) moved off of its foundation, to be treated as though the demolition order is based on a determination that the house is structurally unsound and in danger of imminent collapse. This No Action Assurance will allow such houses to be demolished without inspection and removal of asbestos prior to demolition but will ensure adequate protections through the requirements of the asbestos NESHAP. These requirements include notification, handling, transportation and disposal procedures (e.g., thorough wetting of the material from before the demolition process through disposal). Although not a requirement, EPA recommends thoroughly wetting the interior to the extent possible through window or door openings and/or through openings made into the attic spaces from the exterior prior to the demolition. This No Action Assurance does not apply to structurally sound residences that are being demolished due to the house being uninhabitable or due to the cost of repair being greater than the replacement cost.

The second part of LDEQ's request seeks flexibility regarding government issued demolition orders which are based on broad determinations for groups of houses. EPA agrees that, given the severe and widespread devastation, it may not be practical for state or local officials to make an individual determination for every residential structure regarding whether the house is structurally unsound and in danger of imminent collapse. LDEQ staff have stated that significant delays would result from a requirement to conduct individual structural assessments for every affected residence. In light of these valid concerns and the need to proceed with the recovery effort in a timely manner, EPA is granting LDEQ a No Action Assurance for the asbestos NESHAP to treat a government issued demolition order based on a determination made by the state or local government for groups of residences, e.g., a block, a subdivision,

or other appropriate geographic area, the same as an order based on an individual determination for each of the residences in the group.

These No Action Assurances will be in effect for twelve months from the date of this letter and apply only to the demolition of those houses in Louisiana that were damaged by Hurricane Katrina or Hurricane Rita and which are subject to a government issued demolition order. Consistent with the NESHAP, the No Action Assurances apply only to residences that have four or fewer units. The No Action Assurances apply to LDEQ and persons operating at LDEQ's direction, and the U.S. Army Corps of Engineers and persons operating at the Corps' direction. EPA reserves the right to revoke or modify these No Action Assurances if the Agency believes that such action is necessary to protect the environment or public health.

EPA recognizes that the State faces extraordinarily difficult circumstances in cleaning up the huge quantity of debris generated by Hurricanes Katrina and Rita. EPA will continue to work with LDEQ to address the "grinding" and "post-1980" issues and to identify and address other instances where regulatory flexibility may be appropriate. If you have any questions, please call me at 202-564-2440, or have your staff call Randy Hill of my staff at 202-564-2220 or John Blevins of EPA Region 6 at 214-665-2210.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator

cc: J. I. Palmer, Jr., Regional Administrator, Region 6  
Richard Greene, Regional Administrator, Region 4  
Hal Leggett, LDEQ  
Chuck Carr Brown, LDEQ  
Cheryl Nolan, LDEQ  
BG Robert Crear, U.S. Army Corps of Engineers  
Charles Chisolm, Executive Director, MDEQ





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 24 2006

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.  
Secretary  
Louisiana Department of Environmental Quality  
P.O. Box 4301  
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

EPA and Louisiana Department of Environmental Quality (LDEQ) staff have continued to work together to discuss areas where LDEQ may need additional flexibility to address the challenges caused by Hurricanes Katrina and Rita. In a meeting between our respective staffs on February 16 and 17, 2006, LDEQ was clear that the issues of the number of houses requiring demolition, the sheer volume of debris, limited landfill space that can currently accept asbestos contaminated material, and the need to move expeditiously to proceed with demolition activities are still critical factors that need to be addressed. As a result, LDEQ requested at that meeting additional flexibility to facilitate demolition activities. In light of the circumstances outlined by LDEQ, today EPA is exercising its enforcement discretion and granting a No Action Assurance.

As you know, on February 3, 2006, EPA issued a No Action Assurance for the asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, to allow residences that are subject to a government issued demolition order based on the residence being 1) structurally unsound but not necessarily in danger of imminent collapse, or 2) moved off of its foundation, to be treated as though the demolition order is based on a determination that the house is structurally unsound and in danger of imminent collapse. Under section 61.145(a)(3) of the asbestos NESHAP regulation, buildings subject to a government issued demolition order based on a determination that the building is structurally unsound and in danger of imminent collapse are not subject to otherwise applicable requirements for inspection and removal of asbestos prior to demolition. Such structures must nonetheless be demolished, transported and disposed of in accordance with specified requirements that ensure adequate protection from any asbestos the buildings may contain. These requirements include notification, thorough wetting of the building both prior to and during the demolition process, and proper disposal of all the debris as if it contained asbestos. The effect of the February 3 No Action Assurance is to allow residences subject to government issued demolition orders based on the structures being unsound or moved off their foundations to be demolished and disposed of in accordance with the streamlined requirements of section 61.145(a)(3).

Today, EPA is extending the February 3, 2006 No Action Assurance to residences that are subject to government issued demolition orders because they are uninhabitable for other environmental reasons (e.g., from excessive flood damage rendering the home uninhabitable). Under this No Action Assurance, as under the February 3 action, such residences may be treated as though they are subject to government issued demolition orders based on a determination that they are structurally unsound and in danger of imminent collapse and thus subject to section 61.145(a)(3) of the asbestos NESHAP regulation. In other words, LDEQ, the U.S. Army Corps of Engineers, local governments, or persons acting under direction of any of these governmental entities, may apply to such residences the NESHAP requirements governing buildings that are "structurally unsound and in danger of imminent collapse." As noted above, for such buildings the asbestos NESHAP dispenses with prior inspection and removal of asbestos but requires notification and proper handling, transport and disposal. EPA is taking this action because it recognizes the necessity of addressing a number of residences not covered by the earlier No Action Assurance, but in need of expeditious demolition and removal.

Today's No Action Assurance will be in effect until February 3, 2007, and apply only to demolition of those residences in Louisiana that were damaged by Hurricane Katrina or Rita and which are subject to a government issued demolition order. In addition, this No Action Assurance applies only to residences that have four or fewer units being demolished in areas where public access is restricted. The No Action Assurance applies to LDEQ and persons operating at LDEQ's direction, the U.S. Army Corps of Engineers and persons operating at the Corps' direction, and local governments and persons acting under their direction. Today's action does not apply to structures that are being demolished solely because the cost of repair exceeds the cost of replacement. This No Action Assurance does not apply to any other federal requirements that may apply to residential demolition and disposal activities (other than the asbestos NESHAP provisions specifically discussed herein). EPA reserves the right to revoke or modify this No Action Assurance if the Agency believes that such action is necessary to protect public health or the environment.

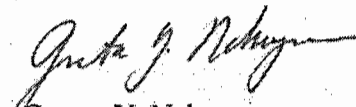
The February 3, 2006 No Action Assurance did not apply to local governments or persons operating at their direction. Today, EPA is amending that No Action Assurance to include local governments and persons operating at their direction because the Agency understands the local governments have been handling a significant portion of the demolition activities directly and they require the same flexibility to proceed expeditiously.

In accordance with section 61.145(a)(3), debris resulting from the demolition of any residence deemed and treated as "structurally unsound and in danger of imminent collapse" under either the February 3, 2006 No Action Assurance or today's No Action Assurance must be handled and disposed of as if it potentially contained asbestos. We understand that LDEQ intends to enhance a number of its existing construction and demolition (C&D) landfills with additional controls to meet or exceed the federal standards under the NESHAP for disposal of these types of waste material that potentially contain asbestos. Because certain types of asbestos (but not all types of asbestos) were banned after 1980, LDEQ intends to send debris from "unsound"

residences built after 1980 to these enhanced landfills. However, since the enhanced C&D landfills, as well as Louisiana's permitted Type I and Type II landfills are required by Louisiana to either meet or exceed federal disposal standards under the NESHAP, EPA will defer to the State to set disposal location priorities.

EPA is committed to continue to work with LDEQ in addressing the very difficult circumstances caused by Hurricanes Katrina and Rita. For example, our staffs are revisiting the use of Air Curtain Destructors and grinders as means of debris volume reduction to further assist in addressing the lack of adequate landfill space. I am hopeful these activities will be able to move forward, perhaps providing relief in both the immediate situation and future times of need. If you have any questions, please give me a call at 202-564-2440, or have your staff call Randy Hill of my staff at 202-564-2220 or John Blevins of EPA Region 6 at 214-665-2210.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator

cc: Richard Greene, Regional Administrator, Region 6  
J.I. Palmer, Jr., Regional Administrator, Region 4  
Dr. Harold Leggett, LDEQ  
Dr. Chuck Carr Brown, LDEQ  
Cheryl Nolan, LDEQ  
BG Robert Crear, U.S. Army Corps of Engineers  
Charles Chisolm, Executive Director, MDEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 2 2007

OFFICE OF  
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COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.  
Secretary  
Louisiana Department of Environmental Quality  
P.O. Box 4301  
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

Thank you for your December 21, 2006 letter in which the Louisiana Department of Environmental Quality (LDEQ) requested that the United States Environmental Protection Agency (EPA) extend the February 3 and 24, 2006 No Action Assurances (NAAs) (Attachments 1 and 2) through September 30, 2007. These NAAs, which currently are set to expire on February 3, 2007, provide flexibility for certain provisions of the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, for demolition activities necessitated by Hurricanes Katrina and Rita.

In your letter, you note that, although much has been accomplished, there are still approximately 25,000 homes requiring demolition and that the NAAs provide needed flexibility to efficiently continue the demolition mission, while ensuring protection of public health and the environment. In light of the circumstances outlined by LDEQ in recent conversations between our staffs, and in a letter from Assistant Secretary Harold Leggett, received by EPA on January 29, 2007, most notably the significant volume of remaining homes that require expeditious demolition, today EPA is exercising its enforcement discretion and extending the February 3 and 24, 2006 NAAs through September 30, 2007. Because of the significant progress made in a number of parishes as noted in Dr. Leggett's letter, we are limiting the applicability of the NAAs extended in this letter to cover demolition activities in the following parishes, which are covered under Louisiana Emergency Declarations and Administrative Orders: Iberville, Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. Tammany, Washington, Calcasieu, Cameron, and Vermilion.

Both LDEQ and Region 6 have done a tremendous job of overseeing the demolition activities under the February 3 and 24, 2006 NAAs and should be commended. Such oversight activities are critical to ensuring protection of public health and the environment and these ongoing efforts must continue (as described more fully below) under the extension granted

today. Furthermore, as LDEQ has described to EPA, the USACE and its contractors have conducted extensive sampling which indicate little or no asbestos emissions. Additionally, no measurable amounts of asbestos were found in any of the air samples taken by EPA at monitoring sites around the greater New Orleans area.

#### NAA Oversight

Under the February 3 and 24, 2006 NAAs, LDEQ and EPA trained approximately 120 inspectors to perform demolition oversight activities and those inspectors subsequently oversaw over 3,200 demolitions. LDEQ is committed to providing the necessary resources to perform the demolition oversight needed to restore the State of Louisiana. As a result of these oversight activities, LDEQ initiated 11 enforcement actions. Both LDEQ and EPA will continue to follow up on these actions and any additional instances of possible noncompliance with the February 3 and 24, 2006 NAAs and the asbestos NESHAP and Louisiana Emission Standards for Hazardous Air Pollutants with the appropriate enforcement action. For the duration of this NAA extension, LDEQ will continue to commit the resources necessary for demolition oversight as utilized in 2006. In turn, EPA Region 6 will continue to support LDEQ field activity based on the funding approved by FEMA under the existing Interagency Agreement (based on the Action Request Form received from LDEQ), which is available through September 30, 2007.

In addition to these oversight activities, EPA Region 6's Compliance Assurance and Enforcement Division (CAED) will conduct several on-site visits at demolition sites with LDEQ to jointly verify compliance. The on-site visits will be conducted on a monthly basis for the first three months starting in March 2007. These on-site visits will occur quarterly thereafter (i.e., once every three months thereafter). Through these on-site visits, CAED will observe the demolition practices and procedures being utilized in order to ensure compliance with the asbestos NESHAP requirements and the NAAs EPA is extending today. CAED also will review any field reports generated from inspection activities.

EPA Region 6 and LDEQ will continue to meet on a regular basis to discuss demolition activities covered under today's NAA extension. Such meetings will continue to include discussions of EPA's observations and oversight activities in addition to available monitoring data. These meetings will continue to include staff discussions regarding technical issues related to demolition activities. EPA Region 6 and LDEQ will continue to use quarterly managerial meetings to allow concerns to be identified and addressed.

#### Recommendations

As noted in the NAAs that are being extended by this letter, the work practice standards under the asbestos NESHAP continue to apply to demolitions covered by the NAAs, including ensuring adequate wetting of the material from before the demolition process through disposal. In addition, while not specifically required, EPA continues to recommend thoroughly wetting the interior to the extent possible through windows and door openings and/or through openings made into the attic spaces and/or walls from the exterior prior to demolition. Where field conditions allow, EPA also recommends that amended water be used for wetting, as this

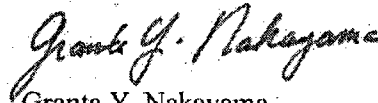
significantly reduces the potential for asbestos release. The surfactant added to the water provides better wetting than regular water and helps ensure that the "no visible emissions" standard is met.<sup>1</sup> For further information on the use of amended water, please contact Region 6.

#### Limitations

Today's NAA extension applies only to the those persons and activities identified in the February 3 and 24, 2006 NAAs and then only to the extent such persons are operating and such activities are taking place in the following parishes, which are covered under Louisiana Emergency Declarations and Administrative Orders: Iberville, Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. Tammany, Washington, Calcasieu, Cameron, and Vermilion. In addition, as is the case with the February 3 and 24, 2006 NAAs that are being extended in this letter, this NAA extension does not apply to any other federal requirements that may apply to residential demolition and disposal activities (other than the asbestos NESHAP provisions specifically discussed in the February 3 and 24, 2006 NAAs and herein). This extension is conditioned on continuation of the oversight activities described above, as well as all the other conditions specified in the February 3 and 24, 2006 NAAs. EPA continues to reserve the right to revoke or modify the NAAs that are extended by way of this letter, as well as the extension itself, if the Agency believes that such action is necessary to protect public health and/or the environment.

Through this extension of the February 3 and 24, 2006 NAAs, EPA is continuing its commitment to work with LDEQ in addressing the very difficult circumstances caused by Hurricanes Katrina and Rita. If you have any questions, please give me a call at 202-564-2440, or have your staff call Randy Hill of my staff at 202-564-2220 or John Blevins of EPA Region 6 at 214-665-2210.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator

#### Enclosures

cc: Richard Greene, Regional Administrator, Region 6  
J.I. Palmer, Jr., Regional Administrator, Region 4  
Dr. Harold Leggett, LDEQ  
Dr. Chuck Carr Brown, LDEQ  
Cheryl Nolan, LDEQ  
BG Robert Crear, U.S. Army Corps of Engineers  
Trudy Fisher, Executive Director, MDEQ

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<sup>1</sup>An example of how to use a wetting agent can be found in EPA's "Guidance for Controlling Asbestos-Containing Materials in Buildings" EPA-560/5-85-024 (Purple Book).

U.S. Department of Homeland Security  
Federal Emergency Management Agency  
Louisiana Transitional Recovery Office  
One Seine Court  
New Orleans, LA 70114  
(504) 762-2018 office  
(504) 762-2899 fax



FEMA

August 30, 2007

Colonel Thomas Kirkpatrick  
State Coordinating Officer  
State of Louisiana  
415 North 15<sup>th</sup> Street  
Baton Rouge, LA 70802

Re: Time Extension Request for EPA Hazardous Waste Removal  
City of New Orleans, FEMA-1603-DR-LA

Dear Colonel Kirkpatrick:

This is in response to three letters: one from GOHSEP, dated August 9, 2007, which forwards a request from the City of New Orleans; another letter dated August 21, 2007, from Mr. Samuel Coleman, P.E., of the Environmental Protection Agency (EPA); and also a letter dated August 24, 2007, from Dr. Mike McDaniel, Ph.D. of the Louisiana Department of Environmental Quality (LDEQ). All letters seek an extension to the current EPA hazardous waste removal assignment.

At the onset of the disaster, several applicants requested Direct Federal Assistance (DFA) for Category A & B work because they lacked the ability to carry out the tasks at hand. DFA's are assigned in accordance with 44 CFR 206.28. This type of assistance was granted through the demolition and debris removal mission assignment given to the USACE. FEMA later signed an Interagency Agreement (IAA) with the EPA to address the environmental concerns of this mission, due to a substantial amount of household hazardous waste intermixed with the debris. This was issued in part because of the inability of the local and state agencies to contract for services to properly dispose of all hazardous waste associated with the debris removal.

With the approaching deadline of September 30, 2007 for the termination of the IAA, both the City of New Orleans and the EPA have expressed concern that the household hazardous waste removal operation is still too much of a burden for the applicants to handle themselves. In its letter, the EPA suggests that the IAA be extended through December 2008.



Colonel Kirkpatrick  
August 30, 2007  
Page 2 of 2

Upon consideration of an extension for EPA's IAA, it is the opinion of the FEMA PA program that hazardous waste disposal is no longer beyond the contracting capabilities of the local and state governments. Consequently, FEMA is prepared to execute the following actions:


- Extend the current IAA for 90 days until December 31, 2007 to allow for ample time to have an exit strategy prepared to transition the responsibilities of the household hazardous waste mission from EPA to individual applicants;
- Prepare PWs to provide funding to applicants for the collection, processing, disposal, and recycling of household hazardous waste for the timeframe following December 31, 2007; and
- Prepare PWs to provide project management oversight of this work.

In light of the concerns of the EPA and LDEQ, FEMA is requesting the following of both agencies:

- Coordinate with the applicants a viable plan which accomplishes a full transition of responsibilities to the local government by December 31, 2007; and

If all of these action items are fulfilled, I anticipate a smooth transition for the management of the remaining cleanup and disposal of household hazardous waste throughout the State. Please do not hesitate to contact me with any questions or concerns.

Sincerely,



Jim Stark  
Director  
Louisiana Transitional Recovery Office

cc: Sam Coleman, EPA  
Dr. Mike McDaniel, LDEQ  
The Honorable C. Ray Nagin, Mayor, City of New Orleans